United States Court of Appeals for the Second Circuit



APPELLANT'S APPENDIX

75-1244



In The

United States Court of Appeals

For The Second Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

NICHOLAS L. BIANCO,

Defendant-Appellant.

On Appeal from the United States District Court for the Eastern District of New York

APPENDIX FOR DEFENDANT-APPELLANT

Volume II, pp. 271a - End

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1	Kaplan-redirect
2	0 Was it true, sir, with respect to the 1969
3	car?
4	A I don't
5	MR. LA ROSSA: Might I have a continuing
6	objection on these questions?
7	THE COURT: Of course.
8	Q What was your answer, sir?
9	A I don't recall one with the '69 car. We have
10	had past experience and I more or less took it on my own.
11	Q Under the circumstances to which you testify
2	concerning the '69 car, is it possible that Nicholas Bianco
3	made the down payment after the delivery of the car?
4	A The '69 car
15	O I mean the '67 car, excuse me.
6	A I wouldn't know at this point.
17	My question was, is it possible that he made
8	the down payment after the delivery of the '67 car?
9	A There is a possibility but I don't definitely
0	at this point
1	MR. MC CAFFREY: I have no further questions.
2	RECROSS EXAMINATION
3	BY MR. LA ROOSA:
4	Q Mr. Kaplan, is it a fact that under normal
5	circumstances in almost every instance you receive your

BY MR. MC CAFFREY:

REDIRECT EXAMINATION

Again, Mr. Kaplan, without asking you for

money at the time of the delivery?

A Yes.

- You just said that there is a possibility that a specific down payment could have been made after the delivery of the vehicle, right?
- o If that was done in this case would your file not reflect some sort of a note or some sort of a memorandum to you that a man owed \$1125 on a vehicle that was just delivered to him?
 - A According to this it shows it was paid.
- Does that indicate to you then as you look back at that record some nine years ago that you received that \$1125, either before or at the time of the delivery of that vehicle?

A It looks like it was paid before the car went out.

O Do you have any recollection that it was any different than that?

A (No response)

MR. LA ROSSA: Thank you. I have nothing further.

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any names, is there anything in that file to indicate that any other person guaranteed the payments on that car in the event recourse was had to you?

MR. LA ROSSA: Objection.

THE COURT: Overruled.

- A No, there was-- What was the question?
- Is there anything in your file with respect to the 1967 car, Mr. Kaplan, to indicate that in the event recourse was had to you, other people agreed to save you from any liability?
 - A There's nothing in the file here.
 - ? But that was a fact, was it not?
 - A There's nothing in the file.
- No, but it was a fact, was it not, with respect to the '67 car?
 - A You asked me if it was in the file--
 - Q Yes, nothing in the file.
 - A Nothing in the file.
- O But it is a fact there was such a guarantee, right?
 - A In the file?
 - No, such a quarantee was made.
- A Well, I don't understand-- You're asking me two questions.

1		Kaplan-redirect	144
2	Q	That's right.	
3	A	One, is it in the file, or is there a	guarantee.
4	2	Right.	
5	' A.	Which question do you want answered?	
6	ú	Was there a guarantee?	
7	A	Yes.	
8	0	Is there any reason for that guarante	e to
9	appear in the	file?	
10	λ,	No.	
11		MR. MC CAFFREY: Thank you.	
12		THE COURT: You may step down.	
13		(Witness excused)	
14			
15	SANFORD	S A L Z, called as a witness,	having
16	been di	aly sworn by the Clerk of the Court, to	estified
17	as fol:	Lows:	
18		THE CLERK: Full name, please.	
19		THE WITNESS: Sanford S-a-1-z.	
20	DIRECT EXAMINA		
21	BY MR. MC CAFE		
22	3	Could you tell us, please, what your p	profes-
23	sion or occupa		
24	A	I'm a dentist.	
25	Q	Do you maintain an office to practice	dentistry?

1 Mayes - direct Yes, sir. 2 MR. MC CAFFREY: I have no further 3 questions. 4 MR. LA ROSSA: I have no questions. 5 THE COURT: Thank you, Doctor. 6 (Witness excused.) 7 MR. MG CAFFREY: The Government calls 8 Louis Nahmias. 9 10 LOUIS NAHMIAS, called as a witness on behalf 11 of the Government, having first been duly sworn by 12 the Clerk of the Court, testified as follows: 13 DIRECT EXAMINATION BY MR. MC CAFFREY: 15 16 Q Mr. Nahmias, what is your employment or 17 occupation? 18 I am a special agent for the Internal Revenue Service. 19 Are you assigned to some particular office 20 of the Internal Revenue Service? 21 Yes, the Intelligence Division. 22 That is in what district? 23 In the Brooklyn District. 24 Will you tell us, please, how long have you 25 been a special agent of the Internal Revenue Service?

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Twenty years.

O Briefly, sir, what are your duties as a special agent with the Internal Revenue Service?

A I investigate criminal tax frauds and failure to file cases.

Q Did there come a time when you were assigned to conduct an investigation concerning one Nicholas L. Bianca?

A Yes.

When was that, sir?

MR. LA ROSSA: Objection.

THE COURT: He is just asking for

MP. LA ROSSA: When?

THE COUPT: Yes.

MR. LA ROSSA: I object, I think it

has no relevance to the witness' testimony.

THE COURT: Now your objection is

overruled.

a date.

A Yes, on or about September of 1971 I was assigned this case.

Q All right.

Now, had you handled this investigation

from its inception?

No, sir, I did not.

1	Nahmias - direct 111
2	Q Were there other special agents of the
3	Internal Revenue Service who worked on this case prior to
4	you?
5	MR. LA ROSSA: Objection.
6	THE COURT: I will sustain the
7	objection in that form.
8	Re can testify as to whether he
9	obtained or was given a file by someone else.
10	MR. MC CAFFREY: All right.
11	Q Mr. Nahmias, did you receive a file when
12	this case was assigned to you?
13	A Yes, I did.
14	Q Did you receive it from another special agent?
15	A Yes, I did.
16	THE COURT: All right.
17	Q Now, sir, what did you do when this case
18	was assigned to you?
19	MR. LA ROSSA: Objection.
20	THE COURT: 1 will permit it.
21	Come up.
22	(The following occurred at side bar
23	without the hearing of the jury.)
24	THE COURT: Are you trying to make a

record or -

:3

MR. LA ROSSA: Absolutely not. Judge.

THE COURT: Have you ever tried a

tax case?

MR. LA ROSSA: Yes, Judge, I have tried.

THE COURT: In a net worth and disbursements case, what an agent did is crucial, what he went through, what he did - -

MR. LA ROSSA: And whom he talked to.

THE COURT: What leads he checked and what investigation he made.

MR. LA ROSSA: He is going to prove negatives on this, I understand that.

THE COURT: He has to.

MR. LA ROSSA: Of course, and I am not objecting to that, I am not trying to make a record, and I know, I think I know a little something about tax cases, but that kind of question is leaving it wide open.

THE COURT: It is precisely what he is supposed to ask, he is supposed to trace the history, what he did in his investigation, he has to do it, and if he doesn't do it you have a motion to dismiss.

MR. LA ROSSA: I don't see this.

banks?

THE COURT: The objection is overruled.

(The trial then proceeded within the hearing of the jury.)

THE COURT: The question was what did you do when you got the file, not what you said then to anybody or what somebody said to you, what did you do?

I examined the file.

All right, sir.

And then what investigative steps did you take, if any, after conducting your investigation of the file?

A I then made a work plan for myself to determine what I had to do to investigate this case.

Q After having, having made a work plan, did you then take any steps to put that into effect?

Yes.

O what steps did you take?

A Well, the first thing I did was that I decided to circularize banks in the area in which Mr. Bianca had resided.

What was the area which you circularized

A The area of Ocean Parkway. Actually at the beginning
I circularized the banks around Ocean Parkway and Cortelyou

1		Nammias - direct
2	Road, in	that area. Subsequently I expanded it to even a
3	wider an	rea.
4		When you circularized the banks, did you
5	have any	leads as to any particular banks that you should
6	circular	rize first?
7		MR. LA ROSSA: Objection.
8		THE COURT: No, I will allow him
9		to answer yes or no, whether he had a lead.
10	A	No, I had no leads.
11		O Approximately how many banks did you circularize
12	A	A hundred.
13		Q Did you receive responses from these banks?
14	A	Yes.
15		Q Did any of them indicate that they had any
16	accounts	in the name of Nicholas L. Bianca?
17	A	No.
18		O Did any of them indicate that they were
9	holding	any assets of any kind for Nicholas L. Bianca?
20	A	No.
21		Q In addition to circularizing banks in the
22	neighbor	thood where the defendant resided, what other steps
23	did you	take during the course of your investigation?
4	A	Well, the file indicated to me that Mr. Bianca had

purchased an automobile from Kaplan Buick - -

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interview?

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MR. LA ROSSA: I object to this.

THE COURT: The proof has already

shown that, I will allow it.

Did you conduct an investigation and interview individuals associated with Kaplan Buick?

I interviewed Mr. Herbert Kaplan.

Q All right, sir.

What did you find out as a result of that

MR. LA ROSSA: Objection.

MR. MC CAFFREY: I will withdraw that

question.

Q All right.

In addition to your interview of Herbert
Kaplan in connection with the purchase of automobiles
by the defendant, what further steps did you take in your
investigation?

A Well, I knew generally that if you purchase an automobile, as a general rule - -

MR. LA ROSSA: I object to this, your Honor, he is being asked what he did.

THE COURT: Yes.

Answer the question, Mr. Nahmias.

The question is what did you do? You are

entitled to say, I went to X, Y and Z and I saw thus and so. You may not recite the conversation and you may not say, I knew this or I knew that.

The question is what did you do?

THE WITNESS: All right.

I went to the County Clerk's Office and I examined the County Clerk's Office to see whether or not Mr. Bianca had purchased any real property in Brooklyn.

Q So was that the office of the County Clerk of Kings County that you went to?

A Yes.

Q Did you find anything in the Kings County

Clerk's Office to indicate that any real property was listed in the name of Nicholas L. Bianca?

A No.

O In addition to going to the County Clerk's Office, did you take any further steps during the course of your investigation?

A I believe I checked with one of the brokerage houses, it may have been Merrill Lynch, just to see if perhaps he may have had an account there.

Q Did you have any particular basis for going to this brokerage house?

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A No, I did not.

Did you find whether or not the defendant had any security holdings or security dealings, that is in this aspect of your investigation?

A I did not.

Q What other steps did you take?

A Well, let me see.

I learned that Mr. Bianca had some insurance claims, and I got the file from the insurance company to determine whether Mr. Bianca had received any insurance awards.

Q All right.

what were the insurance companies that you checked with?

A The Great Eastern Insurance Company.

Q Did you check with any other insurance companies?

A Allstate Insurance, there was a case which is Blum - -

Q Is that an insurance company?

20 A I believe that may be a broker.

Q Did you check with any other insurance brokers?

A Yes, yes, I spoke to a Mr. Arthur Schwartz who was an insurance broker.

Q Just answer yes or no.

Did you have some information that led you

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that you contacted?

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Dr. Mayes, a dentist Salter, a Dr. Nathan Abraham.

All right.

In addition to checking various doctors that were used by the defendant and his family, what further investigation did you conduct in connection with this case?

Well, I made - - I made some attempt to determine hether Mr. Bianca was employed.

> All right. Q

And what did you do in connection with this aspect of your investigation?

> MR. LA ROSSA: Note my objection to this, please.

> > THE COURT: Same ruling.

MR. LA ROSSA: Yes, sir.

May I have a continuing objection

to this line?

THE COURT: No, I want you to object where you think it is appropriate.

MR. LA ROSSA: Yes, sir.

Some of the loan applications that I read indicated that Mr. Bianca was employed by or was self-employed by Easy Cleaning, and I made an attempt to determine whether this was a business of Mr. Bianca's, and I was not successful in determining, in determining whether such a business really

existed.

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What did you do in order to ascertain whether or not the business did in fact exist?

MR. LA ROSSA: Objection.

THE COURT: Same ruling.

Well, actually this entire investigation was not, as

I mentioned before, was not conducted by myself, but I -
someone else had interviewed the individual that was residing
at the address given for this business.

Q Is there some other agent working under your supervision?

It wasn't an agent.

Q In was an employee of the Internal Revenue Service?

It was an employee of the Justice Department.

All right, sir.

What other investigation did you make?

A Well, I learned that - - that Mr. Bianca's younger child had attended this "ontissori school and I had the owner of or the director of the school interviewed for the purpose of getting the information of what was paid and the details.

Q In addition to the information concerning the school, what further steps did you take?

1	1 Nahmias	- direct	121
2	2 Mell, at the time I	got the case I knew that	t Mr.
3	3 Bianca had not filed any tax	returns	
4	4 MR. LA ROSSI	: I object to this.	
5	5 THE COURT: Y	Yes, I will sustain	
6	6 that.		
7	7 That proof	is in this case to the	
8	8 extent that it is in	so far.	
9	9 Now strike	it out.	
10	10 Q All right.		
11	11 Did you make	e any other investigation	n of
12	Mr. Bianca, Mr. Nahmias?		
13	A I must have, yes.		
14	0 Will you te	ll us what did you do, p	lease?
15	A Any other investigate	ion?	
16	Q Yes.		
17	A Yes, I contacted man	y of the witnesses that	we saw
18	here today.		
19	19 Q All right.		
20	20 Would you to	ell us which ones you com	ntacted?
21	MR. LA ROSS	A: Objection.	
22	22 Did you make	e a report	
23	23 THE COURT:	No, I will permit it.	
24	A Yes.		
25	Q Would that	report refresh your memo:	ry?

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All right, sir.

yes.

Do you have that report here?

MR. MC CAFFREY: With the Court's

permission, may the witness step down?

THE COURT: Yes.

(The witness then left the witness stand and approached his bag and then returned with a report to the witness stand.)

Q All right, sir.

Can you tell us what other steps you took

during the course of this investigation?

A Well, when I decided that, I attempted to find some specific items of income on the part of Mr. Bianca.

Q What types of income?

A Specific items, any kind, any type, whether it be salary or self-employment income.

MR. LA ROSSA: Note my objection, please.

THE COURT: Overruled.

You are referring to evidence of payments made to Mr. Bianca?

A Yes.

Were you able to find any evidence of any such payments?

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MR. LA ROSSA: Objection.

THE COURT: Overruled.

Very small, very light.

All right.

made to Mr. Bianca?

What payments did you find that were in fact

MP. LA ROSSA: Objection.

THE COURT: I will sustain that,

unless it is something that is already in evidence.

MR. MC CAPFREY: All right, I will withdraw that question.

All right.

What else did you do, Mr. Wahmias?

at the Lankers Trust application to see whether there was any employment, I went to his insurance company, I went to the Montissori Academy, I went to the Great Eastern. Then of course I decided that perhaps I ought to attempt - -

MR. LA ROSSA: I object to this.

THE COURT: Just say what you did,

don't tell us your mental processes.

A I contacted the Telephone Company to determine whether payments were made by Mr. Blanca during the years

124 Nahmaas - direct 21971 - - rather through 1967 through '71. I contacted the General Motors Acceptance Corporation 3 in connection with any automobile financing during those years. Q Did you make any investigations elsewhere in New York? Yes, I did. 7 e All right. 8 where were those? 9 I contacted the atterney for Mr. Bianca to determine 10 whether he had paid any legal fees to an attorney. What did you find out? 12 MR. LA ROSSA: Objection, your Honor. 13 THE COUPT: Sustained. 14 THE WITNESS: Objection sustained? 15 THE COUPT: Yes. There is no issue. 16 You can say what you did but you 17 can't say what somelody else told you. 18 There is nothing about an attorney 19 so far in the record. 20 Did you do anything else? 21 Did you check anyplace other than 22 New York for any assets in the name of Nicholas L. Fianca? Yes, I did. 24

All right.

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1	Mahmias - direct 125
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2	Would you tell us what you did, please,
3	in connection with this check?
4	A Are you asking whether I personally did this, that
5	I personally
6	Q Well
7	A (Continuing) or in connection
8	Q My question is did you personally do it?
9	A I made some inquiries up in the Providence, Rhode
10	Island area concerning Mr. Blanca with respect to any
11	possible inheritances.
12	Q Where did you go to make these inquiries?
13	A To the Probate Clerk in Providence, Rhode Island.
14	C All right.
15	What records did you check, if any, in the
16	Office of the Probate Clerk?
17	A I shecked the probate records of the Clerk.
18	Q The probate records of what estate?
19	A Of the estate of Angelo Bianca, and that is Mr.
20	Bianca's father, and possibly the estate of I think it is
21	Angela Bianca, Mr. Bianca's mother.
22	O All right, sir.
23	Did you do any other investigative work in
24	Providence, Rhode Island?

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Yes.

Q All right, sit.

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In addition to the investigative steps

you have stated up to this point, Mr. Nahmias, were there any other steps that you took during the course of your investigation?

A Yes.

I interviewed Mr. Selsen who was involved in a judgment that was filed against Mr. Bianca.

MR. LA ROSSA: I object to this.

THE COURT: No, that testimony is in the record, that is permissible.

0 What if anything further did you do?

I interviewed Mr. Young of Lindenbaum & Young.

I have to refresh my recollection a little more.

Well, actually I - - oh, I contacted the Telephone Company, I contacted Con Edison, I contacted Mr. Bianca's landlord.

O Did you make any further investigation as to assets in the name of Nicholas L. Bianca?

A Well, other than the bank accounts, the brokerage, the real estate, automobiles, I don't recall since I had no leads, I don't recall any other investigations.

Q Did you check out all leads that you had, Mr. Nahmias?

A Yes, I did.

Q As to assets in the name of Nicholas L. Bianca?

THE WITNESS: Yes.

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THE COURT: All right.

Did you receive a report from him?

THE WITNESS: Yes.

Q Did you check out all the leads that you had at your disposal concerning sources of income for the defendant?

MP. LA ROSSA: Objection.

THE COURT: Overruled.

Yes.

MR. MC CAFFREY: I have no further questions.

MR. LA ROSSA: May we approach the side bar for a moment?

THE COURT: Yes.

(The following occurred at side bar without the hearing of the jury.)

MR. LA ROSSA: I make a demand at this time for any reports that this agent has written, any statements that he made, under Title 18, Section 3500.

MR. MC CAFFREY: This is the report pertinent to his testimony.

(Document handed to Mr. LaRossa.)
MR. LA ROSSA: Is he the case agent

involved?

MR. MC CAFFREY: Yes.

MR. LA ROSSA: His report has no indication of any of the things that he did.

MR. MC CAFFREY: All right, there are reports of interviews of witnesses who have not yet testified in the case, I consider that would be proper 3500 material when those witnesses appear and take the stand.

MR. LA ROSSA: What is that?

MR. MC CAFFREY: I say there are reports of interviews of witnesses who have as yet not testified, that will be proper 3500 material when those witnesses appear.

THE COURT: That is right.

MR. LA ROSSA: I understand that, but

I am asking is there anything in the case

agent's report which covers any of the testimony

that Mr. Nahmias just gave?

MR. MC CAFFREY: Yes, there is.

MR. LA ROSSA: I mean in addition to this, he told us about the witnesses he has interviewed, he told us about the places he has gone to.

THE COURT: Presumably you have this 3500 material of the witnesses who have testified, and you are going to get the others when the others appear.

MR. LA ROSSA: I never got a piece of paper except of one witness who is the landlord, that is the only 3500 material.

THE COURT: That may be the only statement he took.

MR. MC CAFFREY: There is very little in the case that I have.

MR. LA ROSSA: I'm not suggesting there is, but I am asking is there anything else.

MR. MC CAFFREY: I don't think so. I made a check, that is all.

MR. LA ROSSA: May I have a few minutes to look at this?

MR. MC CAFFREY: I will see if there is anything else.

THE COURT: While he is looking, you can take a quick look at that.

MR. LA ROSSA: I would like very much, if I may.

Now if I can find this - -

(Mr. LaRossa then examines a notebook.)

MR. LA ROSSA: May I just make one quick record, your Honor, and this is what I was driving at during the witness' questioning, I think maybe your Honor misunderstood what I was driving at before:

to introduce evidence of any investigative methods that they use to eliminate all sources of non-taxable income, and that is what the cases give them the right and direct them to do, but they have no right, as they did here, to introduce all the testimony of the investigative methods to determine the expenditures that were made.

THE COURT: Of course they had to. They have to do it, they have to say what they did,
United States of America against Joseph Noonan, Jr.,
and for the first two days of that trial they
recited what they did and what they saw, and this
is taken to the Court of Appeals and to the
United States Supreme Court and was affirmed all
the way up.

MR. LA ROSSA: You will note my objection.

THE COURT: You can object all you want to, but that is the law.

MR. LA ROSSA: I have a duty to perform, I am not trying to impede you.

(Mr. LaRossa then read the document handed to him previously.)

MR. MC CAFFREY: May we approach the bench for a minute, your Bonor?

THE COURT: Yes.

(The following occurred at side bar without the hearing of the jury.)

MR. MC CAFFREY: Your Honor, attached to the agent's investigative report, and I don't think this is 3500 material strictly speaking, but in order to be on the safe side I will show it to Mr. LaRossa.

MR. LA ROSSA: This refers to a few affidavits that I have not seen.

THE COURT: This wouldn't entitle you to -- well, he hasn't recited any of these conversations.

MR. LA ROSSA: I haven't seen that, Judge.

THE COURT: He has not recited any of

these conversations.

MR. LA ROSSA: May I say - - well,

I was about to say, and this makes some
sense, that they refer to - - well, I have
had this from Mr. Selsen but I never
received the affidavit of Mr. Selsen even
though he took the stand and testified here.

There is the affidavit of Herbert J.

Kaplan, a notarized statement, but I received no statement of Mr. Herbert Kaplan.

MR. MC CAFFREY: I have seen no statement.

THE COURT: We don't have to take this
up at this point, if there is anything which
pertains to the immediate witness we can take
that up, otherwise we will take it up after
we excuse the jury or we will be here all night.

MR. LA ROSSA: Apparently Mr. McCaffrey is giving you this for you to make a determination.

THE COURT: He is giving statements that he referred to and which he didn't recite any conversation because you would object to it on the grounds of hearsay.

MR. LA ROSSA: I haven't seen them.

THE COURT: You are not going to see

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them until these conversations - - well, unless these people are produced as witnesses, I assume he is not going to give them to you, and you are not entitled to it.

MR. LA ROSSA: I didn't ask to come up here, Mr. McCaffrey did, to show you those. THE COURT: All right.

(The trial then proceeded within the hearing of the jury.)

MR. LA ROSSA: May these be marked, please?

THE CLERK: One document marked for identification Defendant's Exhibit C. (So marked.)

CROSS-EXAMINATION

BY MR. LA ROSSA:

Q Mr. Nahmias, I show you what has been marked as Government's Exhibit C for identification which I believe consists of some six pages.

You have seen that before, have you not?

Yes, I did.

Is that a report that you prepared?

Yes, I did. A

1			Nahmias - cross 136	
2		Q	Did you prepare that report - excuse me -	
3	when d	id you p	repare that report?	
4	A	Approxi	mately two years ago.	
5		Q	Did you do so based upon notes that you had	
6	made o	f all you	ur activities?	
7	A	Yes.		
8		Q	Did you do so based upon I withdraw	
9	the que	estion.		
10			Does that reflect all your activities?	
11	A	All my	activities?	
12		Q	Yes.	
13	A	No.		
14		Q	Does it reflect only a portion of them?	
15	A	It refle	ects that portion which is relevant to a	
16	prosect	ition car	se.	
17		Q	Let me ask you this:	
18			Do you believe it is relevant to the	
19	prosecu	tion in	this case that any attempt you made to find	
20	assets	in this	case were relevant?	
21			MR. MC CAFFREY: I object to the	
22		form of	the question, your Honor.	
23			THE COURT: Any attempt to find	
24		assets v	which are relevant?	

MR. LA ROSSA: Relevant to make a report.

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THE COURT: I will allow it.

They may be relevant, but I don't put all negatives in my reports, I only put the positive stuff.

For example, there is no negative in the report that you went to the Surrogate Court, is there?

There is not in my report.

Q In there?

No.

Q Is there any other report?

Yes, it is.

Q What other report, Mr. Nahmias?

Well, Mr. McCaffrey has it on his desk, the other portion of this report does mention it.

Q Is there any mention in the report about your circularizing banks other than the report that is before you?

A Not that I recall.

Is there any reference in any reports that are before Mr. McCaffrey or any other place other than the document that is marked before you that recites any of the activities you told us about on direct testimony today?

Do you understand my question?

Could you repeat it, please?

You told us a number of things that you did

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Q Do they reflect any of the activities that you told us about today?

A It reflects, it reflects my, my investigation in this case.

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You told us that you went up to Providence, did you not?

A Yes.

Q Are there any reports other than the report before you today that reflects that you went to Providence?

A Yes.

You told us that you did certain things in Providence?

A Yes.

Are there reports other than what is in front of you right now that reflect what you did in Providence?

A No other - - yes, on Mr. McCaffrey's desk.

Q Did you tell us that you checked out the real estate in Providence?

A No.

Q Did you tell us that you went to the Probate Court in Providence?

A Yes.

Does the report on Mr. McCaffrey's desk reflect that?

A Yes, it does.

Q But not in the report that is in front of you?

A No.

Q Did you tell us that you investigated the

- 1	Nahmias - cross
2	estate of Angelo Bianca and Angela Bianca in Providence?
3	A Investigated?
4	Q That you made an inquiry?
5	A Yes, I made an inquiry.
6	Q Is there any comment in that report about
7	that investigation?
8	A No, there is not.
9	Q Is there any comment in the reports other
10	than that about that investigation?
11	A Other than that what is on Mr. McCaffrey's desk?
12	Q No, sir, other than what is in front of you.
13	A Yes, there is a comment in the report on Mr. McCaffrey'
14	desk.
15	Q You told us that you went to the County
16	Clerk's Office in Brooklyn; did you not?
17	A Yes.
18	Q Did you go to any other County Clerk other
19	than in Brooklyn, New York?
20	A No, I didn't.
21	Q Is there any comment in that report before
22	you that you went to the County Clerk's Office in Brooklyn?
23	A No, there is not.
24	Q Is there any comment in any other report

that indicates that?

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- A No, there is not.
- Including the one on Mr. McCaffrey's desk?
 - A That is right, there is not.
 - You told us that you checked various brokerage firms?
 - A Yes.

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- 8 Q Is there any comment in the report before you 9 on that?
 - A No, there is not.
 - Q Is there any comment in the reports in front of Mr. McCaffrey?
 - A No, there is not.

MR. MC CAFFREY: Your Honor, for the sake of the record, I would like to make clear I don't have any reports in front of me, I have certain affidavits that defense counsel - -

THE COURT: It is not for you to say,

Mr. McCaffrey, he says there is a report somewhere on that table, and I suppose - -

MR. LA ROSSA: Mr. Nahmias, would you go down and take the reports, please, that you have been referring to?

(Witness then left the witness stand and then indicated to Mr. McCaffrey.)

MR. MC CAFFREY: May we have a side bar, your Honor?

THE COURT: Yes.

(The following occurred at side bar without the hearing of the jury.)

MR. MC CAFFREY: I think the issue
here, your Honor, is whether the 3500 material
in this case is a part of Agent Mahmias' report,
and part of it is based on theorizing and
speculative matters to which he didn't testify
during the course of his testimony on direct
examination. It is true there are parts of it --

THE COURT: Let me see it.

(Document handed to the Court.)

THE COURT: Well, gentlemen, you have got a problem, not only is it 3500 material, it is possibly Brady material.

MR. LA ROSSA: Brady?

THE COURT: It is questionable whether in the course of opening the door on any portion of it you can lead him through the whole thing because - - well, it might even be deemed to be a lead, it is a very ticklish question. If it is deemed to be a lead and

if you suggest to him it is a lead then the whole thing comes tumbling down.

MR. LA ROSSA: I, sir?

THE COURT: I am not so sure that you shouldn't show it to him.

MR. MC CAFFREY: All right, if the Court thinks it is proper, I will.

THE COURT: It is not his, it is not his material, either, it is somebody else's.

MR. MC CAFFREY: Yes.

THE COURT: If it qualifies as Brady
material, what is your understanding as to
what Brady material is? Does it encompass any
statements that are made?

MR. LA ROSSA: Certainly, just as long as they tend to exculpate the defendant in any way.

Brady itself, your Honor, well, there
was a statement from a chemist to a third party,
police officers, who were investigators in the
case and it wasn't turned over to defense with
respect to blood stains.

THE COURT: Yes, but that was an independent source, this is self-serving, a

self-serving type. It doesn't qualify as
Brady material.

MR. LA ROSSA: It is self-serving from the third persons.

THE COURT: It is questionable even whether it does that, it is questionable.

MR. LA ROSSA: May I also suggest, your Honor, that in an awful lot of cases since the Court and the prosecutor don't know the theme of the defendant's defense, there are times and there is a tendency that it could exculpate, and anyway, the Court should lean over backwards to do it.

THE COURT: Well, if he opens the door to anything, you can use it. He can take the consequences.

I would think you would be able to play it safe and give it to him.

MR.MC CAFFREY: All right.

MR. LA ROSSA: In addition to that, doesn't it make reference in the report as well to other things?

THE COURT: No, this is what Mr. Druker

did and what the defendant said his sister said to him, and you will see it.

I don't know whether any part of it seems to exculpate, initially it seems to exculpate, but then after that it doesn't seem to.

MR. LA ROSSA: There are also statements.

THE COURT: I haven't seen anything else.

MR. MC CAFFREY: I don't see how he can cross-examine this witness as to what Mr. Druker said or what Mr. Druker did not say.

THE COURT: He can ask anything, Did Mr.

Druker say this to you, but then he opens the

door to get the balance of it in, he knows that.

MR. LA ROSSA: What about the other things the witness testified to that are in there, do you want to show them?

MR. MC CAFFREY: They are all available to the Judge, sure.

THE COURT: What else is there?

MR. LA ROSSA: He has testified about his trips to the Surrogates Court.

THE COURT: There is reference in here in connection with the witness' statement as

to that, but that is all there is, that is why this other - -

MR. LA ROSSA: According to the witness there are a number of other things in that, in addition to that trip to Providence.

THE COURT: I would be inclined to mark this, Mr. McCaffrey, for identification, and show it to Mr. LaRossa.

MR. LA ROSSA: If there is a section in there which deals with what the testimony is, if there is I will ask you to look at it and determine whether or not I should be given some of the other material.

THE COURT: Mr. McCaffrey knows what is in there, I can't answer that.

MR. LA ROSSA: The witness testified there are other reports and other material in the reports.

THE COURT: The only thing I got from him is with respect to the Rhode Island visits, there is a reference to the Rhode Island visit, there are by him and by another person.

MR. LA ROSSA: I believe he said more than that.

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THE COURT: Well, you may be correct, correct me if I am wrong.

MR. LA ROSSA: Am I wrong? Is that the only thing that was in that report?

If I am, I apologize, but I think he said it two or three times.

It is a sensitive area, I would like to have all the package before I finish, and if that is all I am entitled to, then fine.

THE COURT: I think you ought to give him that, you ought to give him this two-page document.

MR. MC CAFFREY: This page (indicating) and the next page (indicating), your Honor?

THE COURT: Yes, based only on the ones you have shown me.

MR. MC CAFFREY: I don't think it is 3500 material, but - -

MR. LA ROSSA: There is nothing else in this investigative report?

MR. MC CAFFREY: Whether it comes in under the Brady rule, I don't know.

THE COURT: I question that, frankly, I am not so sure, that is when you have to show

that she had knowledge and he talked to her rather than if he had talked to her and had knowledge. You might get the whole story before the judge and jury, but that is something for you fellows to find out.

MR. LA ROSSA: I don't even know what you are talking about, so I am not in complete disagreement.

MR. MC CAFFREY: Let the record indicate that I am turning over to Mr. LaRossa - -

MR. LA ROSSA: May I have the rest of the report marked for identification at the end of the day?

THE COURT: You can mark the whole thing now.

(The trial then proceeded within the hearing of the jury.)

MR. MC CAFFREY: I request this be marked for identification as Government's Exhibit - -

THE CLERK: 33.

MR. MC CAFFREY: 33.

Also these two pages be marked as Government's Exhibit 33-A for identification.

THE CLERK: So marked.

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(So marked.)

(Documents handed to Mr. LaRossa.)

CROSS-EXAMINATION

BY MR. LA ROSSA (CONT'D.):

O Mr. Mahmias, tell me what you did in the County Clerk's Office in Brooklyn.

A Yes, they had the index files in the Real Property Clerk here and for the years 1967 through '71 I went through looking for - - well, under the "B," looking for Bianca, Nicholas Bianca, if he had purchased any real property during that period.

Q In other words, during the taxable period?

Yes.

Is that all you did in there?

That was all.

Q In the County Clerk's Office?

Yes.

Q You didn't check '66 or '65?

No, I'm sorry, I did check '66. A

Q Now you recall that?

Yes, I recall that I checked '66. A

Q Let me ask you a question:

Is there any note on what years you checked

- in the County Clerk's Office in any report that you prepared?
 - A Not that I know of right now.
 - Q When did you do this?
 - A I got the case in September of '71 and it was probably around 19 - the early part of either - the latter part of '71 or early '72.
 - Q Some three years ago, at least?
- 10 A Yes.

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- 11 O And where have you written down what exactly
 12 you checked in the County Clerk's Office? You know that
 13 you checked '67, '68, '69, '70 and '71?
- 14 A Yes.
- 15 Q And now you are absolutely sure you checked 16 '66 as well?
- 17 A Yes, there was a reason for it.
- 18 Q Did you check '65?
- 19 A No.
- 20 You did not?
- 21 A No.
- Q Did your investigation lead you to believe that Mr. Bianca lived in New York in 1965?
- 24 A Yes, he did live in New York.
- 25 Did your investigation determine that he

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2 lived in New York in 1964?

A Yes.

Q Did you check the books for 1964?

A No, I did not.

Q Did you check any years prior to 1966?

A No, I did not.

Q Did you check any years subsequent to 1971?

A No, I did not.

Q Did you check other counties other than Kings County?

A No, I did not.

Q Did you make a determination of any kind that Mr. Bianca lived in Manhattan at any time?

A No, I did not. I had no information that he ever had an address in Manhattan.

Q Right up until today?

A Right up until today.

Q Did you ever have information that he lived in any other part of New York City other than Brooklyn during those years?

A Yes.

Q What other part of New York City?

A Did you say New York City?

Q Yes.

	1	Nahmias - cross 152
2	2 A	No, I have no information that he lived in any
3	other	r part of New York City during this period.
4		Q Did you have a mail watch on Mr. Bianca's
5	house	2?
6	A	Yes, I did.
7		Q When did the mail watch go into existence?
8	A	I would say probably during 1962.
9		Q Can you check anything and tell us when it
10	began	?
11	A	It is in our files, not here, in our office files.
12		Q Did you get a court order for that?
13	A	A court order?
14		Q Yes.
15	A	No.
16		Q Do your files reflect any of the mail that
17	was re	eceived from Allstate, Great Eastern or any of those
18	compar	nies?
19	A	That is does my file - ~
20		Q With respect to the mail watch.
21	A	I didn't get it.
22		Q Reflect any of these names?
23	A	No.
24		Q It does not?

No, not that I recall.

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How about any of the doctors that you mentioned like Dr. Abram, Dr. Salter - -

A Well, I don't recall, perhaps it did, the mail watch may have.

Q When was the last time you looked at it?

A Two and a half years ago.

Q Did you tap the Bianca phone?

A Absolutely, unequivocally never.

Q Did you learn about the Montissori School from the mail watch?

A No.

Q How about Kaplan Buick, did you learn that from the mail watch?

A No.

Q How about Merrill Lynch?

A I never got Merrill Lynch.

Didn't you tell us that you interviewed -
A Yes, I said I made inquiries at Merrill Lynch, but

I did not get anything from the mail watch with respect to

Merrill Lynch.

Did you get any of the names of any of the people who testified here this week from that mail watch?

A Well, from my recollection I would say, yes, I seem to recall that perhaps one or two of the doctors did come

1		Nahmias - cross
2	from th	ne mail watch.
3		Q Now you recall that?
4	A	I recall that.
5		Q Tell us which ones you recall, Mr. Nahmias.
6	A	I believe that Nathan Abraham was his name, it was
7	reflect	ed on the mail watch.
8		Q Any other names?
9	A	I do not recall.
10		Q How about any of the insurance companies
11	like Al	1state?
12	A	It is very possible, yes. I do not recall but it is
13	possibl	e.
14		Q How about Great Eastern Insurance Company?
15	A	It is possible, yes.
16		Q But you do not recall that either?
17	A	I don't recall.
18		Q How about Arthur Schwartz?
19	A :	That may have been also come from there, but I don't
20	recall.	
21	,	How about the dentist, Salter?
22	Α :	It may have.
23	(How about Abraham & Young?

Lindenbaum & Young, I'm sorry?

Lindenbaum & Young.

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1		Nahmias - cross 155
2	A	No, that didn't come from the mail watch.
3		Q How about Mr. Selsen?
4	A	That didn't come from there.
5		Q How about General Motors Acceptance Corporation?
6	A	No, that didn't come from there.
7		Q You are sure of that?
8	A	Yes.
9		Q How about Bankers Trust Company?
10	A	That did not come from the mail watch.
11		Q You are sure of that?
12	A	Yes.
13		Q How about Mr. Sclaren (phonetic)?
14	A	That did not come from the mail watch.
15		Q By the way, is the mail watch in existence
16	right	now?
17	A	No, it is not.
18		Q How about Mr. Aquilla (phonetic)?
19	A	No.
20		Q The man who repaired the cars?
21	A	No, that didn't come from the mail watch.
22		Q You are sure of that?
23	A	Yes.
24		Q How about Mr. Prigge from Great Eastern
25	Insura	nce Company?

1		Nahmias - cross 156
2	A	That did not come from the mail watch.
3		Q How about Daniel Whikehart from Con Edison?
4	A	No, that, that didn't come from the mail watch.
5		Q How about Diane Hunte from the Methodist
6	Hospit	al?
7	A	I don't think so, that didn't come from the mail watch.
8		Q Is it your best recollection or that you don't
9	recall	or you are sure that it didn't?
10	A	I would say I don't recall.
11		Q How about Mr. Joseph McCorry of Loew Corporation
12	Did the	at come from the mail watch?
13	A	That didn't come from the mail watch.
14		Q How about Paul Temmer from the Montissori
15	Academy	A.S.
16	A	That didn't come from the mail watch?
17		Q William Fitz Maurice from Allstate Insurance
18	Company	y?
19	A	That may have come from the mail watch.
20		Q Is there anybody that you can absolutely
21	tell u	s came from the mail watch right now, that there is

A No, I can't recall.

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Q You can't recall anyone specifically that came from the mail watch?

no doubt in your mind that it came from there?

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A Other than Dr. Nathan Abraham, I can't recall anyone else.

Q Are you sure that Dr. Nathan Abraham now came from the mail watch?

A No, I am not sure.

- Q How about Miss Rose Gelbard, BiBi Continental?
- A That came from the mail watch.
 - Q No question about that?
- A Well, I recall, I'm pretty sure it came from the mail watch.
- Q Is there anybody else that you can recall specifically that came from the mail watch?
- A Not unless you call them off, I can't recall.
 - Q How about Dr. Mayes?
- A I don't believe so.
- Q /Did he come from your examination of the Methodist Hospital?
- A Yes.
- Q Did the Methodist Hospital come from the mail watch?
- A No, it did not.
- Q What do you mean by circularizing banks, Mr. Nahmias, will you tell the jury what that means?

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A Yes.

A Yes, we sent a letter to numerous banks in Brooklyn and Manhattan, Queens, indicating whether there was any kind of an account in Mr. Bianca's name or any kind of transaction, whether it be an account, a loan, any kind of transaction with Mr. Bianca.

Q How many banks did you circularize?

A Approximately one hundred.

Q I assume they are all over the New York area and other places?

A Yes, sir.

Q Did you receive responses from each of those banks?

A Yes.

Q What name did you put on the circular?

A Nicholas L. Bianca.

Q Did you hear Mr. Bianca's wife's maiden name mentioned in court?

Yes.

Yes.

Coats.

Q Do you remember what it was?

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Q What was it?

Q Did you know that before?

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Mr. Bianca was the recipient of any estate here in New York?

Q Can you tell us what your investigation has

That is right, I didn't.

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1	Nahmias - cross determined as to the years, the span of years generally
2	that he lived in Brooklyn?
3	A I would say that he lived in Brooklyn from 1963
5	through 1973.
6	Q Approximately ten years?
7	A Yes.
8	Q Did you make a determination on where Mrs.
9	Bianca lived prior to her marriage to Mr. Bianca?
10	A No.
11	Q When she was Miss Coats?
12	A No, I did not.
13	Q When you were in Providence, Rhode Island,
14	did you find and check in the Probate Court whether or not
15	any Biancas had died in the last ten years related to
16	Mr. Bianca?
17	A No, I did not.
18	Q You did not find any?
19	A I only looked for his mother and father.
20	Q Did you find them?
21	A I found the father, a record of the father's estate.
22	Q Did you find a record of the mother's estate?
23	A No, I didn't.
24	Q Did you determine whether the mother had died
25	in the last ten years?

1	Nahmias - cross
2	A I know when his mother died.
3	Q Will you tell us when she died?
4	A In 1967.
5	MR. LA ROSSA: Your Honor, would
6	this be the time to stop?
7	THE COURT: Are you getting tired
8	MR. LA ROSSA: Yes.
9	THE COURT: We will take a recess
10	until tomorrow morning at 10:00 o'clock.
11	Bear in mind tomorrow we will pr
12	run through to about 1:30 and then suspe
13	the day. That is the way it looks right
14	anyway.
15	Don't discuss the case.
16	See you tomorrow.
17	(At 5:00 o'clock p.m. the jury le
18	the courtroom.)
19	MR. LA ROSSA: May I see you a mor
20	before we leave?
21	THE COURT: Yes.
22	MR. LA ROSSA: Your Honor, I would
23	like to ask the witness one or two questi

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re you getting tired? Yes. will take a recess g at 10:00 o'clock. tomorrow we will probably 1:30 and then suspend for way it looks right now, the case. row. ock p.m. the jury left May I see you a moment Your Honor, I would ss one or two questions about the report and ask him to point out to Mr. McCaffrey in front of the Court any

portions of the report that have any reference to any of his testimony that he gave here today, without my seeing it.

THE COURT: He doesn't need to point it out in front of the Court, just point it out to Mr.McCaffrey and Mr. McCaffrey can show it to me tomorrow at about a quarter after ten.

MR. LA ROSSA: I would like to have a portion of the report that was given to me marked.

THE COURT: The two-page report is on your table.

MR. LA ROSSA: No, not this one - - that is it, I am sorry.

Your Honor, on Page Number 7 of this report it refers to an affidavit and refers to something that the attorney for the corporation stated, and then there is a statement.

MR.MC CAFFREY: I don't think there is any such evidence.

MR. MC CAFFREY: Are you referring to a letter?

THE WITNESS: I was referring to that letter.

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MR. MC CAFFREY: That is the letter that he sent to our office.

THE WITNESS: Yes, there is no affidavit there.

MR. LA ROSSA: In the next paragraph.

THE COURT: All right, that is okay, you produce that.

MR. LA ROSSA: I am not clairing that anybody acted not in good faith, I am just trying to find out things.

THE COURT: Let us go.

MR. LA ROSSA: There is a notarized statement of Herbert Kaplan, president of the corporation, to the effect that he approved the credit to Bianca with recourse.

> Now I have never seen anything like that. Would you like to see it?

THE WITNESS: I have seen it and we have the statements.

MR. LA ROSSA: Why didn't I get it, then, as 3500 material when the man took the stand?

THE WITNESS: It was not a part of my exhibits and I didn't, I didn't introduce it because he named Joseph Columbo in it and I

wasn't about to introduce it here.

MR. LA ROSSA: It is not a question of being introduced, it is a question of me being entitled to it.

THE COURT: If you want, you can have it. If you want me to recall him, I will recall him.

I will call him if you want, I will call him for you if they won't call him.

MR. LA ROSSA: I just want to see it.

MR. MC CAFFREY: We will furnish a copy.

I wasn't aware that existed. We will furnish a copy of that to Mr. LaRossa.

MR. LA ROSSA: Just bear with me for one moment.

That is the last application.

THE COURT: Tell me something, the other two-page exhibit, did you regard that as an inculpating or exculpating statement?

MR. LA ROSSA: I don't know, I would like to read it again, to be honest.

It is very confusing and I don't want to fool around willy-nilly, I will read it overnight.

THE COURT: I don't know what it is myself,

but you have it, so it doesn't make too much difference.

We will see you tomorrow morning.

MR. LA ROSSA: Yes, sir.

Good night.

MR. MC CAFFREY: Good night.

THE COURT: Good night, gentlemen.

(And so concluded the afternoon

session.)

* * *

THE CLERK: Criminal cause on trial,
United States of America versus Nicholas L. Bianca.

THE COURT: Good morning, ladies and gentlemen.

MR.MC CAFFREY: Your Honor, the Government would like to make an offer of proof with respect to prior similar acts in this case.

testimony that in 1962 the defendant filed a tax return and obtained a small refund in connection with that return. I think that this figure in 1962 is indicative that the defendant was aware of the filing requirements under the Internal Revenue Code and is admissible on the issue of knowledge, intent and willfulness.

The fact that he did not file returns in 1963, 1964, 1965 and 1966 constitute prior similar acts which I think are also admissible on the issue of willfulness. To substantiate this and provide authority for it I hand up to your knoor two Second Circuit cases which I think are pertinent.

MR. LA ROSSA: I am aware of the authority
Mr. McCaffrey cites. I object to its introduction

for the purposes of the record.

THE COURT: On what ground?

MR. LA ROSSA: I object on the ground of relevancy for one thing and I do not believe that failure to file tax returns in the past are any evidence of willfulness.

THE COURT: I would possibly have agreed with you. I think, however, Mr. McCaffrey is saying that he filed once to get a refund and then he stopped filing and that shows a course of conduct from which the jury could infer willfulness.

If there never had been a filing by a person who claimed he was ignorant of the law and the fact he never filed since he was twenty-one and it would not add to his willfulness today but what he is saying is he wants to show he knew of the requirement of filing because when he was entitled to get something back he filed.

MR. LA ROSSA: That is for a 1962 return.

I have less objection to that than I do with
the failure to file in the intervening years.

THE COURT: You are going to have to

show he was required to file in those intervening years.

MR. MC CAFFREY: Well, your Honor, I think the jury has to draw that inference.

THE COURT: I mean if you have a willful attempt to evade and you are going to show prior similar acts you will have to show that there was unreported income in the prior years and evidence of willfulness in the prior years to get your proof in. You cannot just show failure to file.

MR. MC CAFFREY: There is no indication that was required in the cases that were cited, your Honor, and in addition to that, we have a situation - -

THE COURT: Bear in mind also in Magnus there was also a charge of willful attempt to evade Federal income taxes for the three years in question. You have a similar failure to file case.

MR. MC CAFFREY: Another fact to be considered would be the fact that the defendant reported a small income, a very small income in 1962 which would appear to make it unlikely that

there was any wealth accumulated during this period of '63, '64, '65 and '66.

THE COURT: In other words you want to show he had no prior accumulated assets.

That would be a more legitimate reason.

MR. MC CAFFREY: It would also be offered for that purpose.

THE COURT: I can see it from that standpoint but the question is can you ask the jury to infer willfulness and intent from a similar failure to file. I can see it from the standpoint of corroborating the starting point, so to speak, that I have no difficulty with.

MR. LA ROSSA: May I respond before your Honor decides on this? I do not want to interrupt.

MR. MC CAFFREY: If a man reports an income of merely a few hundred dollars in 1962 it would seem indicative of the fact that he has no wealth at that point and that he must have had some income to live on during the years 1963, 1964, et cetera, in which no returns were filed.

THE COURT: I suppose you could draw an inference from the whole picture of willfulness.

MR. LA ROSSA: May I raise one problem, please? During the years 1962, 1963, 1964, 1965 and 1966 which Mr. McCaffrey is proffering to the Court at this point --

THE COURT: Let me also add you raised this question in your cross-examination.

MR. LA ROSSA: What is that, sir?

question in part in your cross-examination yesterday.

MR. LA ROSSA: Dy asking him whether he checked real estate records prior to 1966 or 1967?

THE COURT: Yes.

MR. LA ROSSA: I do not see it.

THE COURT: You said the Government was being remiss by not checking the records prior to 1966.

MR. LA ROSSA: Sir, I do not think you heard me say anything like that.

THE COURT: I heard that inference just

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the introduction of the prior years, the failure to file without proof that there was a requirement to file, number one. Number two, there was no accumulated income that was non-taxable over this period. The man could have been a recipient of a huge estate some time during this period.

THE COURT: It defies logic, Mr. LaRossa, that anybody would inherit several million dollars in an estate and not have any income from it. That is what the Government is saying.

MR. LA ROSSA: The seven million dollar estate could have been other than in New York and Providence.

THE COURT: I am saying it is unlikely.

MR.LA ROSSA: I think I would be crazy
if I said it was not unlikely but I do not think
that is the issue.

THE COURT: That is the issue, that is the question, that is what they are asking the jury to draw, that is the inference.

MR. LA ROSSA: I submit unless they are prepared to prove there was a requirement to file those years that they have no right to

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THE COURT: It defies logic, Mr. LaRossa, that anybody would inherit several million dollars in an estate and not have any income from it. That is what the Government is saying.

MR. LA ROSSA: The seven million dollar estate could have been other than in New York and Providence.

THE COURT: I am saying it is unlikely.

MR.LA ROSSA: I think I would be crazy if I said it was not unlikely but I do not think that is the issue.

THE COURT: That is the issue, that is the question, that is what they are asking the jury to draw, that is the inference.

MR. LA ROSSA: I submit unless they are prepared to prove there was a requirement to file those years that they have no right to

introduce that evidence.

years now this man has never filed a tax return and the year before he did file a tax return so he knew he had to file a tax return when it was to his benefit and he filed a tax return and he got a refund and after that he said no more tax returns, that is what Mr.

McCaffrey is saying.

the first tax return you might have an argument because you can say one year after another year he never knew he was supposed to file a tax return, if anybody can assume that posture and I am not sure they can unless they are just completely oblivious of what is going on around them. He said he had knowledge and that plus the fact they want to show he never had any accumulated income and never filed tax returns and also further that this is evidence of willfulness.

MR. LA ROSSA: I understand the Government's position but I frankly object to it.

THE COURT: The only qualm I have,

Mr. McCaffrey, but I am inclined to take it, but I do not know whether in a failure to file case whether a court is allowed to take proof of failure to file prior returns as evidence of willfulness. You have something unique here because you have a 1962 filing and you say that shows knowledge and then something else. The only thing that troubles me about instructing the jury they may use such evidence to infer willfulness is that you have not shown he was required to file in any of those years. I can see it to show willfulness, knowledge yes, but willfulness and intent, it bothers me unless you show that he had more than six hundred dollars a year during those years.

Take your typical net worth case where they start with a net worth opening statement, a net worth in 1960 and they show substantial increases in expenditures in each year thereafter. Your taxable year starts in 1965 and then they show in 1962-'65 tax returns there is a loss and the Government wants to show willfulness, there is no question about it. Or if you have a forged check case, which is the other one you handed me,

you have to show that there was a forgery in the prior years. The handwriting expert has to show it was a forged handwriting on the other checks. You cannot dump checks on the table and say they are che same type of checks. You have to show the crime, the willfulness.

Is that your point?

MR. LA ROSSA: Yes.

THE COURT: I will allow it on the issue of the starting point. If you want to put your payment in 1962 in the light of that that is up to you.

MR. MC CAFFREY: Yes, we will put that in, I think that is relevant, your Honor, under the circumstances.

THE COURT: I would think you could argue knowledge from it.

MR. MC CAFFREY: You can argue knowledge and you can say the income was so small it was unlikely he accumulated anything.

(The jury took its place in the jury box.)

THE COURT: Good morning, ladies and gentlemen. I apologize for being late. We

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had a legal argument we had to settle before we called you in. I also apologize for the temperature in this room which if you had been with us last summer during the hottest days it was around 85 and then when we called down and they came up they lowered it to around 40.

That went on all summer long.

LOUIS NAHMIAS, having been previously duly sworn by the Clerk of the Court, 'as recalled to the witness stand and testified further as follows:

CROSS-EXAMINATION

BY MR. LA ROSSA:

Q Mr. Nahmias, yesterday you told us you did some investigation with respect to Easy Floor Waxing.

THE COURT: Would you come up one second, gentlemen?

(Side bar held without the hearing of the jury as follows:)

of witnesses waiting? Perhaps if it is just as convenient we might interrupt his cross-examination and take the witnesses you

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MR. LA ROSSA: I am not going to be terribly long, about fifteen minutes at most.

(Conclusion of side bar.)

- MR. Nahmias, you told us about an investigation of Easy Floor Wax yesterday, did you not?
- Yes.

BY MR. LA ROSSA:

have.

- Q Did you determine from within the State of New York whether there was a certificate of incorporation filed?
- I looked for a certificate of incorporation.
- O Did you determine whether it was a certificate filed of doing business under an assumed name?
- A I looked to see if there was a certificate on file.
 - Q And I assume you found none?
- I did not.
- Q Where did you look for the certificate for doing business under an assumed name?
- At the County Clerk's Office in Kings County.
- Q In your investigation did you make a 25 determination that Mr. Bianca married one Francesca Coats?

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Q Did you make a determination on when that occurred?

Yes.

Yes.

Ω Do you know what state it occurred in?

A I believe in New York State.

 Ω Did you obtain the marriage certificate or the application to marry?

A No, I did not.

O Did you ever try and make a determination on where Francesca Coats lived prior to marrying Mr. Bianca?

A Yes.

Q Did you do that by checking the marriage application?

A I do not recall where I got the information from.

Q Did you, by virtue of that, find out at the time Miss Coats' parents' names?

A Yes.

Q Did you determine their address?

A Yes.

Q Have you at any time subsequent to that checked the Surrogates Court in any county, anywhere, with respect to Miss Coats' parents?

A No.

1		Nahmias - cross 184
2		Q Did you determine what Miss Coats' last
3	address	was?
4	A	Yes.
5		Q Prior to the marriage?
6	A	Yes.
7		Q What county was that in?
8	A	I believe in Nassau County.
9		O Did you make any check in Nassau County
10	with re	spect to Miss Coats as to assets she may have had
11	prior t	o the marriage?
12	A	No, I did not.
13		MR. LA ROSSA: I have nothing further.
14	REDIREC'	r examination
15		MC CAFFREY:
16		CAPPREI:
17		Q Did you make any determination, Mr. Nahmias,
18	as to w	mether or not Francesca Coats' parents were still
19	living?	
20	A	No, I did not.
21		Q Was any check made with respect to Miss Coats'
22	employme	ent prior to her marriage?
23	A	I failed to uncover what the employment was.
24		Q Did anylody make a check on that?
25	A	I do not recall.

1	MR. MC CAFFREY: Miss Peters, please.
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6	THE WITNESS: Yes.
7	THE COURT: Keep your voice up loud enough
8	so he can hear everything you say, all right?
9	DIRECT EXAMINATION
10	BY MR. MC CAFFREY:
11	Q Miss Peters, are you testifying here this
12	morning under a grant of immunity from the Court?
13	A Yes, sir.
14	Q Will you keep your voice up as much as
15	possible, please.
16	Do you know the defendant in this case, Nicholas Bianco?
17	
18	A Yes, I do.
19	Q Do you see him in the Courtroom?
20	A Yes, I do.
21	Q Where is he, please?
22	A Over there.
23	(Indicating.)
24	Q When did you first meet Nicholas Bianco?
25	A October 28, 1966.

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Q Did you see Nicholas Bianco after your first meeting with him in October, 1966?

A I would have to refer to the records I have.

Q Do you have something that would refresh your memory?

A Yes, I do.

Q All right. Would you take it out, please. After your meeting in 1966, did you see him from time to time during 1966?

A Yes, sir, I did.

Q All right. Did you see him during 1967?

A Yes.

Q All right. When was the first time that -- I'll withdraw that.

Did you go out with Nicholas Bianco in 1967?

A Yes, I did.

Q When was the first time you went out with Nicholas Bianco during the year 1967?

A On January 2nd.

MR. LA ROSA: May I request that whatever the witness is looking at be marked for identification, please?

MR. MC CAFFREY: All right. Request this be marked for identification as Government Exhibit No. 45.

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THE CLERK: Three sheets marked for identification as Government Exhibit 45.

Q Can you tell us please, what that paper is that you have in front of you Miss Peters?

They are notes that I kept in my diary that was subpoenaed.

Q Is that the diary itself?

A No. I threw the diary away. It's from an appointment book.

Q All right. Having refreshed your memory from looking at that list, Miss Peters, when was the first time that you went out with Nicholas Bianco in 1967?

Can you tell us where you went on that occasion?

We went to the Crown Bar, Gaslight and in Providence, Rhode Island --

Did you have dinner at any of those places? I assume we did, yes.

Did you have drinks at any of those places? Yes.

Q And who paid the check for that dinner and those drinks?

A Mr. Bianco.

January 2nd.

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All right. Did you again go out with Nicholas Bianco after that occasion?

A Yes, sir.

Q And when was that?

A January 6, 1967.

Where did you go on that occasion, Miss Peters?

I was in Providence, Rhode Island and we went to the Gaslight.

Q What is the Gaslight in Providence, Rhode Island? Is that a restaurant?

Well, as I recall, it was a restaurant, after-dinner place, just to drink.

Q Did you have drinks there on that occasion?

A Yes.

Q Who paid the checks for those drinks?

A Mr. Bianco.

Q Did you go out with Nicholas Bianco at any other occasions after that?

A Yes.

Q When was the next time?

A January 7th.

> Where did you go on January the 7th? Q

We went to a restaurant called Winklers. A

Q Would you say that a lot more louder?

1	Peters-direct 11 ·
2	A We went to a restaurant called Winklers.
3	Q Where is that located?
4	A In Providence.
5	Q Did you have dinner at Winklers Restaurant?
6	A Yes.
7	Q Who paid the check at Winklers on that
8	occasion?
9	A Mr. Bianco.
10	Q All right. Did you go out with Nicholas
11	Bianco on any occasions after that?
12	A Yes.
13	Q When was the next time?
14	A February 14th.
15	Q Where did you go on February 14th?
16	A It was Valentine's Day and I I don't recall
17	whether we went anywhere at all.
18	Q All right. When was the next time you went
19	out someplace with Nicholas Bianco?
20	A March 6th.
21	Q Now, on March 6th, where did you go?
22	A . We went to the Club 21 for dinner.
23	Q Who paid the check on that occasion?
4	A Mr. Bianco.
5	Q All right. After that did you have any further

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dates with Mr. Bianco?

March 7th.

Where did you go on March the 7th?

Danny's Hideaway.

Did you have dinner at Danny's Hideaway?

A Yes, we did.

Q Did you have drinks there also at that time?

Probably.

Q Who paid that check?

Mr. Bianco.

All right. Did you go out with Mr. Nicholas Bianco again after that?

A Yes.

Where did you go the next time?

Well, on the 10th, we went to the Four Seasons and The Plaza.

THE COURT: Here in New York?

THE WITNESS: Did you ask?

THE CCURT: Here in New York?

THE WITNESS: Yes, sir.

THE COURT: For dinner?

THE WITNESS: Yes.

All right. Did Mr. Bianco pay the check on those occasions when you went to those places?

1	Peters-direct 13
2	A Yes.
3	Q All right. Did you have any other dates with
4	Mr. Bianco after that?
5	A On the 11th.
6	Q Where did you go on the 11th?
7	A Orsini's for dinner.
8	Q Did
9	THE COURT: That's also here in New York?
10	THE WITNESS: Yes, sir.
11	Q Did Mr. Bianco pay the check at the restaurant
12	A Yes.
13	Q After that, did you have any more dates?
14	A Yes.
15	Q What was the next one, please?
16	A On the 14th.
17	Q The 14th of what? What was the date, Miss
18	Peters?
19	A March 14, 1967.
20	Q All right. Where did you go on March 14th?
21	A Well, actually we just spent the day together. We
22	went to a men's apparel shop called Leighton's.
23	Q Did Mr. Bianco make any purchases there?
24	A Yes, he did.
25	Q Where is Leighton's located?

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A On Fifth Avenue. It could be located on Madison Avenue; I really don't recall.

Q All right. Did you have any further dinner dates with Nicholas Bianco?

A Well, Nicky -- Mr. Bianco was away in Rhode Island for a while. I again saw him on the 21st of March.

Q Where did you see him on March 21st?

A I gave him a Birthday Party.

Q And where did that party take place?

A In my apartment.

Q Did you pay for that? Did Mr. Bianco pay any part of it? Do you recall?

A I would have to -- I would have to assume that Mr. Bianco paid for part of it or most of it.

Q Were there any other occasions when you went out with Nicholas Bianco after that Birthday Party?

A On the 22nd.

Q 22nd of what, please?

A March.

Q Where did you go on the 22nd of March?

A We just stayed at home.

Q Did you have any further dates when you went out to any restaurants?

A Not that day, no.

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- A I would assume so.
 - Q Were there any other further dates?
- A 29th.
 - Q 29th of March? Where did you go then?
- A I just have "for drinking at the Apartment" which is a bar.

THE COURT: In Boston?

THE WITNESS: No, in New York. I had returned.

- Q Ebw long did you remain there; do you recall?
- A In Rhode Island?
 - Q No, the Apartment Bar?
- A Oh, probably, maybe an hour or two.
 - Q Did Mr. Bianco pay the check for that.
- A Yes.
 - Ω Did you go anyplace after that?
- A I don't recall.
- Q Did you have any further dates then, alter going to the Apartment or some other occasions, some other day?
- A April 6, 1967.
 - Q And where did you go then?
- A I only -- I made notations in the appointment book to meet at 2:30 and again between 8 and 10.

1		Peters-direct	17
2		Q Do you know where you went that time?	
3	A	I don't remember.	
4		Q Are there any other dates that you had	
5	with N	licholas Bianco?	
6	A	There are many.	
7		Q Were there any other dates when you went of	out
8	to din	ner with Nicholas Bianco?	
9	A	April 13th.	
10		Q Where did you go on April 13th?	
11	A	We went to La Caravel. He, a friend of mine, and	i
12	then w	we went to the Mousetrap which is also a bar.	
13		Q Who paid the check at the La Caravel Resta	urant
14	A	I have no notation on that, but I would assume it	:
15	would	have been Mr. Bianco because the other person was	our
16	guest.		
17		Q And the drinks at the Mousetrap, who paid	
18	for th	ose?	
19	A	It would have probably been Mr. Bianco.	
20		Q After that occasion, were there any further	er
21	dates	you had with Nicholas Bianco?	
22	A	On the 18th we went to dinner.	
23		Q Where did you go to dinner?	
24	A	I have no note.	

All right. After that, were there any further

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dinner dates?

- Q Where did you go on the 19th?
- A I spent the day at Radio City with Mr. Bianco's family and then we went to Angelo's for dinner. We went to the Apartment Bar for a drink.
 - Q Who paid the check at Angelo's?
- A At Angelo's, it would have been Mr. Bianco.
 - Q After that, were there any other dates?
- A On the 20th.
 - Q Where did you go on the occasion?
- A We went to the Circus. Then we stopped in for a drink. We went to the Apartment and to the Mousetrap.
 - Q You refer to the Apartment?
- A That's the bar.
- Q The bar. All right. And who paid the expenses in connection with that day's activities?
- A Well, for the Radio City I would have, but for the Circus, Mr. Bianco did.
 - Q And the apartment Bar and the Mousetrap?
- A That would have been Mr. Bianco.
 - Q All right. Were there any further dates?
- A 21st.
 - Q Where did you go on the 21st?

1	Peters-direct 19
2	A We had lunch at Sherry Neatherland.
3	Q Did Mr. Bianco pick up the tab for that?
4	A Yes.
5	Q Is that the 21st of April?
6	A 21st of April.
7	Q And after that lucnheon on the 21st of April,
8	were there any other dinners?
9	A On the 23rd.
10	Q Where did you go on the 23rd?
11	A We went to Blum's with a friend.
12	Q What is Blum's; is that a restaurant?
13	A It's a small restaurant no longer in existence, just
14	for very light snacks.
15	Q Who paid the check at Blum's?
16	A I really don't recall that.
17	Q After that were there any other dates?
18	A Well, we went to the El Hombre on the 23rd.
19	Q Where is that located, Miss Peters?
20	A I don't remember.
21	Q All right. Did you have dinner there?
22	A I would assume so.
23	Q Drinks?
24	A Probably.
25	Q Who paid the check at the El Hombre?

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- Q After that, were there any other dates?
- A On the 24th.

Mr. Bianco.

- Q Where did you go on the 24th?
- A There was a notation that was requested that I put in here about --

MR. LA ROSA: I object to this.

THE COURT: No, you can look at your notes and refresh your recollection and then, testify as to your recollection. Don't testify as to what's actually in your notes.

THE WITNESS: Don't testify?

THE COURT: No. Don't say what's in your notes as such. Just look at your notes and refresh your recollection and then give us your best recollection.

THE WITNESS: It was to pay the July -- I mean to pay the interest on my jewelry.

- Q Who paid that interest?
- Well, at that time, I was going out with Mr. Bianco and he was, he was helping me in some ways as much as he could. At that particular time, he helped me pay the interest.
 - Q How much was that?

2	A	\$400.00.

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- Q All right. After that, did you, were there any more dinner dates?
- A On the 25th.
 - Q 25th of April?
- A April, we went to Hamilton's, it's a restaurant in Brooklyn.
 - Q All right. Did you have dinner there?
- A Yes.
 - Q And who paid the check for that?
- 12 A Mr. Bianco.
 - Q Okay. Were there any other occasions when you went out with Nicholas Bianco?
- 15 A On the 27th we stayed home.
 - Q Home. When you went out, were there any other occasions when you went out?
 - A On the 28th we celebrated a 6 month knowing each other.
 - Q All right. Did you go out for dinner on that occasion?
 - A We probably did.
 - Q Do you recall where?
- 24 A No, I don't.
 - Q When was the next occasion, if any, when you

went out for dinner with Nicholas Bianco?

A Not for dinner, but on the 30th we spent the day, we were just more or less sight-seeing, looking at houses and then we looked at apartments. We went to the Mousetrap and we went to the Apartment Bar.

Q All right. When you went looking at houses, what was the purpose in looking at the houses?

Mr. Bianco. We were thinking, maybe there might be some kind of future and we were looking at houses with the thought in mind that maybe, even if it couldn't materialize, we were looking at them. And then, we looked at apartments in his building to see about getting a larger apartment.

Q Well, when you went out that evening, who paid the check for the places that you went to?

A Mr. Bianco.

Q Were there any other occasions where you went out with him after that?

A May the 12th.

Q Where did you go then?

A We went to the Voison and the Apartment Bar.

Q After that were there any other times when you went out with Mr. Bianco?

A On the 19th.

1	Peters-direct 23
2	Q Where did you go on the 19th?
3	A I have no record.
4	Q Any other occasions after that?
5	A The 20th.
6	Q Where did you go on the 20th?
7	A We went to Gillies.
8	THE COURT: Is that a restaurant, Ma'am.
9	THE WITNESS: Yes.
10	Q Would you like a drink of water?
11	A Thank you.
12	THE COURT: Did you have dinner there?
13	THE WITNESS: Yes, we had dinner there.
14	Q All right. And when you went to Gillies,
15	who paid the check?
6	A Well, we were with other people and a fight involved
7	because of Lee Remick and Rock Hudson and I
8	MR. LA ROSA: I object to this and move that
9	it be stricken.
0.	THE COURT: Strike it out.
1	Can you recall who paid the check?
2	THE WITNESS: That's why I'm explaining it
3	because in the confusion it was Mr. Bianco, but I
4	wanted to make certain. I mean, there's a lot of

confusion and --

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THE COURT: You think it was he that paid it? THE WITNESS: That's what we had the fight about, yes.

THE COURT: That's May 20th?

THE WITNESS: May 20th.

- After that, Miss Peters, were there any further dates on which you went out to dinner with Nicholas Bianco?
- On the 28th.
 - Where did you go on the 28th?
- Marbona's Italian Restaurant.
 - Who paid the check on that occasion?
- Mr. Bianco.
- After that, did you go out on any occasion to any other restaurant?
- On the 29th.
 - Q Whole did you go on the 29th?
- We went to a Chinese Restaurant. We went to a place called Clang's and then we went to the Apartment for drinks.
- All right. Who paid the check at these places?
- Mr. Bianco.
- Q After that, were there any other times that you went out with him?
- A June 4th.

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Q Were there any other dates after that?

Q Where did you go on June 11th?

Nasscala Restaurant.

Q Did you have dinner at Nasscala Restaurant?

Yes, we did.

June 11th.

Q Who paid the check for that?

A Mr. Bianco.

1	Peters-direct 2
2	Q Was there any other occasions when you went
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4	A June 18th.
5	O Where did you go on June 18th?
6	A We went to the Grada-Astora.
7	O Is that a restaurant?
8	A Yes, it is. It's downtown.
9	O Did you have dinner there?
10	A Yes.
11	Q Who paid for the dinner?
12	A Mr. Bianco.
13	Q After that?
14	A The 21st.
15	Q Where did you go on the 21st? Is that June
16	21st?
17	A June 21st. Billy Gwon.
18	Q Is that a Restaurant?
19	A It's a Chinese Restaurant.
20	Q Where is it located?
21	A I would think it's on the East 50's.
22	Q Did you have dinner at Billy Gwon's?
23	A Yes, we did.
24	O Who paid for that dinner?

Mr. Bianco.

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Q All right. Were there any other dates that you had with Mr. Bianco? Where you went out for dinner with him to restaurant.

- A July 9th.
 - Q Where did you go on July 9th?
- A We went to Clang's.
 - Q And did you have dinner there?
- A Yes. We had dinner with a friend.
- Q All right. Did Mr. Bianco pay the check on that occasion?
- A Yes, he did.
- Q After that did you go anyplace else with Nicholas Bianco?
- A Well, I have here, we -- that was the day I had an auto accident and I don't remember whether we actually went to dinner or returned to the apartment.
- Q All right. Well, on some -- was there some other day after that on which you went out for dinner?

 A On the 16th.
 - Q Where did you go on the 16h?
- A We went to a place in Astoria called the Ace Bar.

 A place called the Sand Pebbles and the Cafe Royale.

THE COURT: Where is the Cafe Royale, also in Astoria?

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THE WITNESS: I think so. I'm not sure.

Is it in Queens, Miss Peters?

It could be, I really don't remember the Cafe Royale. A

> THE COURT: Did you have dinner at any of these places?

THE WITNESS: Well, we had drinks at the Ace Bar, probably at the Sand Pebbles and the places were all very unfamiliar to me. So I really would have no way of associating.

- Q Who paid the check at these places?
- Mr. Bianco.
- Q All right. Did you have any discussion with Nicholas Bianco about the Cafe Royale?
- No. We discussed the Ace Bar.
 - Q And what did he say about the Ace Bar?
- Mr. Bianco wanted to see what the Ace Bar was like and what kind of business they were doing. With the possibility in mind, perhaps, of maybe owning the bar.
- Q I see, all right. After that were there any other occasions that you went out with Mr. Bianco?
- A August 3rd.
- Q Where did you go on August 3rd, Miss Peters? We were in Southhampton and we had to go to South-A hampton.

Did you go to any restaurant?

Yes. We went to Judge's, which is a dinner restaurant.

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Q All right. Did you have dinner at the Judge's Restaurant in Hampton?

Yes.

Q Who paid the check on that occasion?

A Mr. Bianco.

Q

Q Were there any other occasions when you went out to dinner or went out to --

A August 4th.

Q And where did you go on August 4th?

A Kasasabasa in West Hampton.

Q Did you have dinner there?

A Yes we did.

Q Who paid the check for that dinner?

A Mr. Bianco.

Q After that, were there any other dates that you had with Nicholas Bianco where you went out to restaurants?

A August 5th we were still in the Hamptons and I have an asterisk there. I don't know if we did. On the 7th we returned to New York and it was my birthday. We went to the Toledo restaurant.

Q Who paid the check at the Toledo Restaurant?

A Mr. Bianco.

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	Peters-direct	30		
	Q Did you have any further dates with Mr.			
Bianc	so after that?			
A	Yes. We went to the Yellow Fingers and the El			
Morroco.				
	Q Did you have dinner at either one of those	2		
place	s?			
A	We had dinner at the Toledo. The Yellow Fingers			
would	have been for drinking and the El Morroco would ha	ve		
been for the same thing, drinking.				
	Q Who paid the tab at these places?			
A	Mr. Bianco.			
	O After that, were there any other occasions			
when you went out for drinks with Nicholas Bianco?				
A	On August 10th.			
	Q Where did you go on August the 10th?			
A	We went to the Toledo.			
	Q Did you have dinner there?			
A	Yes. We had dinner with a friend and his wife.			
	Q And did Mr. Bianco pay?			
A	Mr. Bianco picked up that check, yes.			
	Q All right. After that were there any other			

We stopped by the Apartment, a bar.

Did you park the car, did you have drinks there?

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A Yes.

Q Who paid at the bar?

A Mr. Bianco.

Q After that, were there any other dates?

A Well, on the 11th we had gone to Southhampton.

Q Did you go to any restaurants in Southhampton?

A We went to the McCarthy's for dinner.

Q All right.

A And Scotch Mist for cocktails.

Q Who paid the check at those places?

A Mr. Bianco. On the 12th, we shopped in Hampton and we went to Southhampton. We stayed at the Southhampton Motel and then we returned on the 13th.

Q Now, Miss Peters, do you know an individual by the name of Joseph Rabinovich?

A Yes, sir, I do.

Q Were you present at any time that both

Joseph Rabinovich and --

A Yes. Mr. Rabinovich was a very good friend of mine. When I started going out with Mr. Bianco, I introduced them.

And after that original introduction, Miss Peters, were you present on any occasions when Mr. Bianco and Mr. Rabinovich were together?

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- A Yes, I was. We went out several occasions.
- Q All right. Was business discussed in any of those occasions?
- A Yes.
 - Q What kind of business was discussed?

 MR. LA ROSA: Objection. Objection to the form of the question.

THE COURT: What kind of business was discussed? Well, let's have an approximate date, a place and what the conversation was.

MR. LA ROSA: Then, I will withdraw my objection.

THE COURT: Let's have those three.

- Q All right. Can you tell us approximately when this conversaion took place?
- A It might be in my appointment, the diary was much more thorough, but I don't have that.
 - Q To the best of your recollection.
- A It would be April 13th, 1967 at La Caravel.
 - 0 Now --
- A That is to the best of my recollection.
- Q What was the nature of the business discussed on this occasion?
- A I had gone to Mr. Bianco and asked him if he knew or could help a friend of mine who needed money and at one point

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he didn't or didn't say anything or didn't, but when he got to know Mr. Rabinovich and became acquanted, yes, he said that he would try to help him.

Q Did Mr. Bianco at any time tell you that he had, in fact, made a loan to Joseph Rabinovich?

MR. LA ROSA: Objection to the form of the question.

THE COURT: No, I'll allow it.

A Could you repeat that please?

Q Did Nicholas Bianco at any time tell you, that he had, in fact, made a loan to Joseph Rabinovich?

A Yes, he did.

Q Did he say what the amount of this loan was?

A It was between 10 and 20,000 dollars.

Q Did he say what the interest was on that loan?

A Well, he didn't really want there to be an interest.

But, he mentioned that if there were and there might have been, I don't know that. The points, which I don't know, what points really mean, I don't remember how many.

O Did he ever discuss this loan with you at any other time after this?

A Once or twice.

What did he say on these other occasions? What

A That the interest was very high and he didn't want Mr. Rabinovich to pay that kind of money and that he would like to see him not, you know, keep the loan going.

Q Did he say how much the interest was?

A No. But it was exorbitant because he was concerned that Mr. Rabinovich wasn't able to pay the money.

Q Did you have any further discussions after that with Nicholas Bianco concerning this loan?

A No. Other than that the loan existed.

did he say about this loan?

Q Did Mr. Bianco ever indicate to you at any time the loan had been repaid?

A He -- he wanted him to get rid of the loan. He didn't want that hanging over Mr. Rabinovich's head. So, he had suggested another way of helping him financially so that he could absorb one loan for another.

Q And did he say anything about what this other means of financing the payment of the loan was?

A It had something to do with a man in Queens who was going to arrange to give Mr. Rabinovich enough money to take care of the prior loan and make the loan smaller. So that Mr. Rabinovich would have some kind of cash or some kind of loose money.

MR. MR. MC CAFFREY: I have no further questions.

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BY MR. LA ROSA:

CROSS-EXAMINATION

Q Miss Peters, have you ever testified before a Grand Jury?

A No, sir.

Q Have you ever given a statement to any agents?
By agents.

Q By agents, you mean any Federal or State agents or for Assistant U.S. Attorney?

A I believe I gave one to the District Attorney if that is the District Attorney, in fact.

MR. LA ROSA: May I have some time to read this, please?

THE COURT: Do you want a five minute recess?

MR. LA ROSA: Yes, sir.

THE COURT: Miss Peters, we call them Assistant
U. S. Attorneys in this Federal System and then there
are District Attorneys in the State System.

THE WITNESS: I didn't know that. I have his name, but I always referred to him as the District Attorney.

THE COURT: That's all right. I understand. We'll take a 5 minute recess and don't discuss the case.

(Jury is excused at 10:50.)

MR. LA ROSA: Sorry to drag you right back, but I made demand upon Mr. McCaffrey for the notes that the witness used. He refuses to turn those over to me as 3500 material. I've made demand to see the diary which this witness stated the notes are a product of an appointment which she's referred to on a number of occasions. Mr. McCaffrey refused.

THE COURT: The notes have got to be turned over. I mean, she used on the witness stand.

MR. LA ROSA: My understanding is she also testified she used the diary and appointment book to make some of the notes that were before her.

MR. MC CAFFREY: I object to turning over of that material.

THE COURT: Wait a minute. Wait a minute.

Miss Peters, you mind stepping up here for a moment,
please.

Now, sit down. As I recall, something you said was destroyed?

THE WITNESS: Yes. The diary because the diary contained very personal things.

THE COURT: That's all right. It's destroyed, it's destroyed. You can't have the diary.

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MR. LA ROSA: If it's destroyed, certainly.

THE COURT: The appointment book, where is that? Do you have it with you or does the Government have it?

THE WITNESS: The Government has it.

THE COURT: May I see it, the appointment book? Who seals that?

THE WITNESS: I did, sir.

THE COURT: You sealed it?

THE WITNESS: Yes.

THE COURT: Did you use that in any way to prepare the notes you've just been testifying from?

THE WITNESS: Yes, mostly.

THE COURT: You did?

THE WITNESS: Some of the notes, you see, I had kept prior when I had to bring some information down to Mr. Sontag and, but most of it is compiled from the diary.

THE COURT: From the diary or --

THE WITNESS: From the appointment book.

THE COURT: As far as you know, the Government has never laid eyes on that book?

THE WITNESS: Mr. Sontag has.

THE COURT: Who's Mr. Sontag? You say the

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attorney?

MR. MC CAFFREY: Employee of the Internal Revenue Service with the New York District Force, Your Honor.

THE COURT: He asked it.

THE WITNESS: Didn't actually read them, but they had me read them over to them page by page. They were physically there with me.

THE COURT: Is there anything of what you would characterize as interment nature in that book that you prefer not to have revealed? I'll not say I'll honor it, I'm just asking the question.

THE WITNESS: Except there are names of friends and people that are personal. I don't think it would be to anyone's advantage to open the book.

THE COURT: Well, Mr. Bianco's counsel asked for it, you understand.

THE WITNESS: Well, I would say there are personal things in there, but I would have to leave it to the discretion of the Court.

THE COURT: I'm inclined, if it's been used, I'm inclined to make it available to both sides, but maybe you wish to reconsider.

MR. LA ROSA: No, sir.

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THE COURT: All right.

THE WITNESS: For how long would that be necessary?

THE COURT: During the course of the day.

THE WITNESS: Because I don't think you'll be able to read them. You might try, but even I would have difficulty. It's very small, if you can, but I doubt it. You'll need my assistance.

MR. MC CAFFREY: You see, Your Honor, Miss Peters was interviewed by agents of the Internal Revenue Service. She was asked about these dates with Nicholas Bianco and she made reference to a diary and probably to these appointment books the time of that interview. That information was incorporated in the case report of Mr. Nahmias, the agent on the case.

THE COURT: I remember.

MR. MC CAFFREY: He had time several years back. More recently, Miss Peters was asked to check her appointment books, to see if there were any additional occasions when she wnet out with the defendant and she has done that to verify the other occasions on the list. She has done that.

THE COURT: But Mr. LaRosa is entitled to

cross-examine her with respect to that. One of the sources of her recollection is that appointment book so --

THE WITNESS: There are certain things I left out that would bear very strongly on my case.

I mean --

THE COURT: Facts that you have not recited are in there?

THE WITNESS: That I thought would be best not to bring out.

THE COURT: Well, that is up to, if Mr.

Bianco wants to bring it out, that's his problem.

You may open it. Both sides may examine it.

MR. MC CAFFREY: Just so we know what we're dealing with, may -- is there anything of a personal embarrassing nature in here that in any way personally is embarrassing to you, Miss Peters?

THE WITNESS: Well, if they question me about it, it would — the time when Mr. Bianco beat me up and put me — took me to the hospital, I have that I thought that I didn't want to bring that out. There are two occasions where he physically abused me. One very badly and I wrote that in the diary — I mean in the appointment book. I wrote it because I

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kept an appointment with the doctor.

THE COURT: I understand, but it all depends on if the book is being made available to both sides. Both will question you on it within the limits of the rules set by the Court as we go along.

THE WITNESS: I just don't want the Jury knowing that I've been beaten up.

THE COURT: Depends on what course of events the case takes.

MR. LA ROSA: Can I open it?

THE COURT: Yes, you may. Mr. McCaffrey is free to look at it too.

All right. You may, we're in recess. I take it you want a few minutes, gentlemen.

MR. LA ROSA: Yes.

(A recess is taken at 11:00 A.M.)

(Jury reenters Courtroom at 11:20 A.M.)

CROSS-EXAMINATION Cont'd.

BY MR. LA ROSA:

Q Miss Peters, those notes you were using on the witness stand, do you have them in your bag? Yes, sir.

> May I have them, please? Thank you. Miss Peters, when did you meet Nicholas Bianco for the

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first time?

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A On 28, 1966.

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Some time during the year 1966, did he give you a gift?

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A Yes, sir.

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Q Was that gift a diamond pin from Tiffany's?

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A Yes.

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Q No question in your mind that was during the year 1966?

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A It was right after I met him.

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Q Some time between October 1st of 1966 --

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A And Christmas. It was a Christmas gift.

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Q It would have been some time in December of

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A Yes.

worth; do you know?

1966?

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Q Do you know how much that diamond pin was worth?

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A It wasn't a diamond pin. It was gold with a diamond.

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Q Gold colored diamond pin. How much was it

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A Well, I don't question the value of the gift, but

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it would have to be somewhere in the \$500 area.

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Q And during the year 1966, from the time you met him in October until the end of the year, will you tell

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us how many times he took you out to dinner during that period?

- A Amount of times?
 - Q Yes.
- A We were constantly together except when he was away.
- Will you refer to your notes please and tell me, if you can, how many times he took you out to dinner from October 1, 1966 until December 31st?
- A The number of times?
 - Q Yes.
- A Well, you have my notes, sir.
 - Q Let me show them to you.
- A That does not include at home?
- Q I'm talking about times when Mr. Bianco took you to an establishment of some sort and made money.

THE COURT: In 1966.

THE WITNESS: Notes on 1966 are in my appointment book.

MR. LA ROSA; May we mark that, please?

THE COURT: Yes.

THE CLERK: One book marked for identification as Defendant's Exhibit D.

Q Is this the appointment book you're referring to, Miss Shayne? I'm referring to Defendant's Exhibit D for

identification.

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A Does that also include cocktails or must it be exclusively dinner?

Q Cocktails and dinner out in an establishment where Mr. Bianco made some sort of money?

A Does that include medical bills?

Q Medical bills that Mr. Bianco paid for you in 1966. Tell us what they were too, please.

THE COURT: Let's take one at a time.

Q So we don't confuse the Jury, tell us how many times he took you to a restaurant for dinner from October, 1966 until December 31st, 1966?

May I borrow these notes while you're looking at that, please?

> MR. LA ROSA: May that be marked for identification?

THE CLERK: One sheet of paper marked for identification as Defendant's Exhibit E.

O Miss Shayne, will this help you, Defendant's Exhibit E, in answering the question that's just been put before you?

Ah hm. 30 approximately.

Q 30 occasions. On those 30 occasions did Nicholas Bianco pay --

- A On each occasion?
 - Q Yes.
- A To me, yes.
- O During the year 1966, did he buy you any gifts other than that diamond pin or that gold pin with the diamond? Did he buy you a dress, for example?
- A He gave me a dress.
- Q Did he give you any money from October 1, 1966 until December 31, 1966?
- A Yes, he did.
 - Q How much did he give you?
- A Approximately -- I couldn't tell you in added figures.
- Q Just give us your best recollection on what it was.
- A Well, if he had it and if I needed it, he would given me never less than \$100.
 - Q How many times did that happen?
- A I never wrote it down.
- Q What's your best recollection now? How many times did it happen from October 1, 1966 until December 31st? Did it happen all at once?
- A No. It happened more in 1966 than in '67.
 - Q How about '66?
- A I would say he gave me money to shop for food or for

1	Peters-cross 46
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4	A I can't tell you in number.
5	Ω More than once?
6	A Certainly.
7	Q More than 5?
8	A Certainly.
9	Q More than 10?
10	THE COURT: Talking about 1966?
11	THE WITNESS: Yes. I'm thinking because
12	there were times when I went to Rhode Island that
13	I have to have the fare for.
14	Q How much money would you say that Nicholas
15	Bianco gave you in November and December of 1966?
16	A I would have to study the book a little longer and
17	go through knowing where we went, what we did, whether I
18	was at home or not, with him or without him. Whether there
19	was a medi-al occurence, I would not be able to commit
20	myself to an answer that I cannot stand by.
21	Q And can you give us an estimate?
22	A I would rather check it thoroughly.
23	Q Then can you tell us whether or not he paid
24	any medical bills or gave you money for medical bills from

October 1966 until December 31st?

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A I don't believe in '66.

MR. MC CAFFREY: Objection.

THE COURT: Step up gentlemen.

(A side bar discussion is held out of the hearing of the Jury.)

THE COURT: I trust you realize what you're doing.

MR. LA ROSA: Doing one thing, sir.

THE COURT: If disproof of a similar act you claimed didn't exist in the prior year -MR. LA ROSA: Sorry, sir.

THE COURT: You've just disclaimed a prior

act that didn't exist in a prior year.

MR. LA ROSA: Also proved the starting point December 31, 1966, is faulty.

THE COURT: As long as you're fully --

MR. LA ROSA: Judge, my client has got to live with my mistakes, whatever they may be and my decisions.

THE COURT: As long as he's aware of what's going on.

MR. LA ROSA: That's right.

(The following takes place in the presence of the Jury.)

THE COURT: Read back the last question.

(Question is read back as requested by

Reporter.)

THE WITNESS: I don't think in '66. There were in '67.

Q Is there any way you can tell us by looking at those records approximately how much money Nicholas Bianco gave you from October the 1st, 1966 until December 31, 1966?

A Very little.

Q Did he ever borrow any money from you during that period?

A No.

Did he ever ask you to pay for any of the restaurant bills or entertainment bills that came up from time to time from October 1, 1966 to December 31, 1966?

A Mr. Bianco is not the type of man to take money from a woman.

Q Did you ever see him in a position from
October 1, '66 to December 31, 1966 when he didn't have the
money to pay for the bill and he had to ask you for it?

A Sir, when he didn't have it he used a credit card.

Q So your answer would be no, you never did pay any of those bills?

1	Peters-cross	49
2	A Sir, I did not pay any bills.	
3	Q Tell me this, Miss Shayne, how many	
4	THE COURT: Miss Peters.	
5	Q Miss Peters. I'm sorry.	
6	A Thank you.	
7	Q I think I've been calling you Miss Shayne	
8	all along. I apologize.	
9	Miss Peters, tell me how many times you discussed	
10	any aspect of this case with Mr. McCaffrey.	
11	A We never went into complete detail about my diary	
12	or the	
13	Q Any aspect of the case, Miss Peters.	
14	A The aspect of the case?	
15	Q Any aspect.	
16	A I may seem ignorant to you, do you mean in general	
17	the case?	
18	Q Let me try again, Miss Peters.	
19	How many times have you had conversations with	
20	Mr. McCaffrey, not when, just how many?	
21	A Four or five.	
22	Q How many times have you had conversations w	ith
23	Mr. Nahmias?	
24	A Numerous occasions.	
25	Q More than 4 or 5?	

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Yes.

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- Q How many times have you had conversations with Mr. Sontag?
- A I believe twice.
- Q He is another gentleman who's employed by the Internal Revenue Service, isn't he?
- A I thought he was a District Attorney, but yes, he must be.
- Q When was the last time you had a conversation with Mr. McCaffrey before you walked into Court here this morning?
- A Saturday.
- Q When was the last time before Saturday that you had a conversation with Mr. McCaffrey?
- A I don't remember.
- O Don't remember the last time before that?

 A Could have been four weeks, five. I really didn't
- keep a record.
- Q Tell me this, Miss Peters, have you ever met me before today?
- A No, sir, but you know if you --
- Q A few moments ago, Miss Peters, I asked you if you'd be willing to speak to me during the Court recess.

 Is that right?

Yes.

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You feel Mr. McCaffrey would protect your

interest in this Courtroom?

No, I do not.

MR. MC CAFFREY: Object, Your Honor.

THE COURT: I'll allow it. It's cross-examina-

Did you decline to do so?

MR. MC CAFFREY: Objection.

THE COURT: I'll allow it.

THE WITNESS: I said without Counsel or benefit or Counsel, I didn't know whether I should or shouldn't let you look at it. I asked if you would do it in front of the Judge so that if there was anything wrong in your questioning I would have someone to object.

Q Miss Peters, on Saturday when you discussed with Mr. McCaffrey this case, was your Counsel present?

No, but I consider him almost Counsel.

Q Mr. McCaffrey?

Well, in a way, yes, because --A

Q You feel he's acting on your behalf?

I got the subpoena and I talked with him. I feel that since I'm going to be here in Court, that would be the person I would direct my questions to.

tion.

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Q You do not?

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A I do not because he advised me to get Counsel also and I could not afford it at the moment.

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Q I'm sorry. You finished?

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A I could not afford the Counsel at the moment.

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Q But, Miss Peters, you've no problem talking to Mr. McCaffrey without Counsel or without the Judge being

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present. Isn't that right?

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MR. MC CAFFREY: That is argumentative, Your

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Honor, and I object.

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THE WITNESS: I would say I've difficulty

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in speaking with Mr. McCaffrey's questions.

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Q But you do speak to him without either your

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own lawyer or --

17 18 A Well, I would speak to you to if I had known you over a period of time.

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Q Oh, the reason you didn't speak to me today is because you had not met me today?

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A Because I do not know my rights as a person here in

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Court.

MR. MC CAFFREY: I object to that line of questioning.

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THE COURT: I'll allow it.

2	Q Miss Peters, how long do you know Joseph
3	Rabinovich?
4	A Since I was, I believe, 19, 20.
5	Q Will you give us that in years, please?
6	A Well, we'd have to go from my birthday to I first
7	met him, I believe, it was 19 and we can check that
8	'61.
9	Q During the years from 1961 to 1966 you knew
10	Mr. Rabinovich, did you not?
11	A Yes, sir, I did.
12	Q Saw him many times?
13	A Yes, sir, I did.
14	Q As a matter of fact, during a period of time
15	the two of you were living together, were you not?
16	A No, sir. I've never lived with a man in my life.
17	MR. MC CAFFREY: Objection.
18	THE COURT: I'll allow it.
19	THE WITNESS: Certainly not more than with
20	Mr. Bianco.
21	Q Did you have any personal relationship with
22	Mr. Rabinovich in all of those years?
23	A Yes, I did.
24	Q Were you thinking about marrying him?
- 11	

No, I never did.

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		Q	During	the	years	1961	to	1966,	was	he	taking
you	to	restaur	rants?								

- A Yes, he was.
- Q Was he giving you money occasionally to buy food and groceries?
- A Yes, he was.
- Q When, for the first time is it that you -did you tell us that Nicholas Bianco met with Mr. Rabinovich?
 A At La Caravel.
- Q That's the very first time?
- A I believe so. I said approximately, I was not sure.

 When I started dating Mr. Bianco, I felt I should tell

 Mr. Rabinovich. He would be the first person that should
 know I had met the other.
 - Q You did that?
- A I certainly did.
 - Q You did that in October of 1966?
- A Not in October, no.
 - Q Did you do it in November?
- A I believe I did it in December -- January.
 - Q Of '66?
- A January '66 or January --
- Q And when, for the first time, did Mr. Bianco ever meet --

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2	A Now, before I introduced him in person, it was on
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4	Q You introduced them on the telephone?
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8	A I can't remember.
9	Q Did there ever come a time that you talked *
10	to Mr. Rabinovich on the telephone
11	A Rabinovich
12	Q When you put Mr. Bianco on the phone?
13	A Yes, sir, there were.
14	Q When was that?
15	A Oh, it had to be in '67. It probably was just before
16	or after we met at the restaurant and they started to know
17	each other.
18	Q La Caravel?
19	A Yes, but I'm not sure of the date.
20	Q Well, did they know each other before they
21	went to La Caravel?
22	A Mr. Rabinovich knew of him.
23	Q To your knowledge, did they ever meet each
24	other at that point?
25	A They would have had no. They would have had to be

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together to meet each other.

So, it's your testimony then that they never met before that day at the La Caravel or that evening in the LaCaravel?

A Not until I introduced them. If there's an error because of lack of the diary and Mr. Rabinovich will state himself when he met him.

Q We'll ask Mr. Rabinovich that.

I'm asking you when for the very first time you were ever in the company of Mr. Bianco and Mr. Rabinovich on the same day?

A I believe it was that.

Q Same time?

At La Caravel.

Q You told us that was the 13th of April, 1967? Is that correct?

A Is this all your --

Q Would you like to see this?

A Yes, please.

Q Is that the date?

A Yes.

Q April 13, 1967.

Miss Peters, was that a prearranged appointment?

A Aren't most dates? I mean, not to seem facetious,

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but most appointments are prearranged.

Q Was the prearranged appointment between you and Mr. Rabinovich and Mr. Bianco?

Yes. I wanted them to get to know each other.

Q Is that the only purpose of that meeting?

A I wanted him to know who I was seeing.

And on that occasion, is it your testimony that you said to Nicholas Bianco that Mr. Rabinovich needs 10 to 20 thousand dollars?

A It wasn't on that occasion, no.

Q Did you discuss anything about money on that occasion?

A It was not that occasion. First of all, I didn't know who really Mr. Bianco was.

Q Did you discuss money needs of Mr. Rabinovich on April 13th?

A Not at that time.

Q No. When for the first time did you and Mr. Bianco discuss Mr. Rabinovich's needs?

Not until 1967.

Q '67. Wasn't that April 13th date 1967?

You're talking about later. A

Q Tell us when, please.

It would have to be, I would say, kind of early A

Spring. 2

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- Q Isn't April 13th Spring?
- Could be May or June. A
 - Q Can you tell us when it was?
- I cannot because I didn't write it down. A
 - O Tell me --
- I'm sure that --
- Q These hand written entries that are before us here, and I'm referring to these which are marked Government's Exhibit 45 for identification, is that your handwriting?
- A Yes, it is.
 - Q Did you make those notes?
- This morning and last evening. A 15
 - Q Did you use a diary to make those notes?
 - A I used that appointment book.
 - Q Didn't you tell us --
 - I'm sorry. My diary was first used and then I des-A troyed them.
 - Q Did you use your diary during interviews that you had with agents of the Internal Revenue Service? Did you use your diary?
 - A Yes.
 - Q When?

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- A Once.
 - Q When was that?
- A When I first went there.
 - Q When was that, Miss Peters?
- A I don't have the date.
 - O And can you give us the year?
- A Two years ago.
 - Q 1973?
- A '72, '73.

MR. LA ROSA: Can these be marked, please?

THE CLERK: One document marked for identifica-

tion as Defendant's Exhibit F.

THE WITNESS: Your Honor, am I responsible if I don't remember the dates? I'm very bad on numbers.

THE COURT: Just say it.

THE CLERK: One document marked as Defendant's Exhibit G.

Q I show you what's been marked Defendant's Exhibit F for identification and ask if you've ever seen it?

A I know I haven't seen it.

Q Will you look at it, please, and tell us whether that refreshes your recollection as to what date you met with agents of the Internal Revenue Service?

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A May 3, 1973.

Q Is that the day you had the diary, Miss Peters?

A Yes.

Q I assume the diary had a lot more detail in it than this small diary ---

A You assume -- but it didn't. I explained it had a much more personal nature to it.

Q Would it, the diary, have reflected the first time that you spoke to Mr. Bianco about Mr. Rabinovich needing money?

A I doubt that I would have put in the fact that he needed money. I don't think I would have put that in any book.

Q Was that too personal to put in the book? A Because there were certain things I found out that I was not aware of before.

Q But you didn't put it in the book?

I don't believe so. A

Q After going to the Internal Revenue Service on May 3, 1973, when did you destroy that diary?

A Almost immediately after.

Q That was --

A May I finish reading it?

Q Oh, sure.

A Then everything I've said so far is right here.

Miss Peters, you asked if you could read it.
The answer is yes. Are you finished?

A Yes. Thank you.

Q Will you look at your notes and your book there in front of you which is marked -- well, that's '66, is it not?

A Yes.

O Look at the '67 book.

THE CLERK: One book marked for identification as Defendant's Exhibit H.

Q I show you what's been marked Defendant's Exhibit H. Is that your 1967 diary?

A Appointment book, yes.

Appointment book. Will you look through that appointment book and your notes and tell us if you can whether anything in those notes or the diary, the appointment book, refreshes your recollection on when for the first time you spoke to Mr. Bianco about Mr. Rabinovich's financial needs?

A It wouldn't be in here because this is my appointment book and if we were to go to meet him to discuss anything about money, it would be in here.

Q Well, show me where, please.

A Do we have time to look through the book?

Q I beg your pardon?

A Do we have time to go through it?

THE COURT: Yes. I thought you said it was somewhere around May. Why don't you start in there.

THE WITNESS: Did I say May or was it that I was down to --

THE COURT: I think you said you met him.

It's the Jury's recollection that will control.

THE WITNESS: But not for the loan.

THE COURT: On April 18th you introduced him on that date. Then you said after a response to a question that Mr. LaRosa asked, I recall it, that the loan was made sometime in the Spring of 1967.

THE WITNESS: The introduction was made sometime in the Spring.

THE COURT: Well, you go ahead and testify. You give us your best of when you brought up the question of money.

THE WITNESS: I think I had said earlier that the loan would not have been extended that early in their relationship.

Q My question, again, Miss Peters, is, will you examine the document before you and tell us, if you can,

when, for the first time, you had any discussion with Mr. Bianco about Mr. Rabinovich's financial needs.

THE COURT: Take your time.

THE WITHESS: I might have to go through the whole -- there would be discrepancies here because I thought that Mr. Bianco was with another gentleman at my apartment to discuss something.

Now, as to what they discussed, it could have partly been that because there were two of them who eventually went to see Mr. Rabinovich.

- Q Does that refresh your recollection on what day you initially spoke to Mr. Bianco?
- A It could have been -- well, I spoke to him on several occasions.
- Q About Mr. Rabinovich's financial needs?

 A That's what I'm saying right now.
- Q When was the first time, Miss Peters? Just give me the date.

THE COURT: Or an approximation would do it.

THE WITNESS: Mr. Bianco, I'm sure, would not remember something like that.

THE COURT: Do you have any --

MR. LA ROSA: I move that be stricken, Your Honor.

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THE COURT: No. She's been very responsive.

THE WITNESS: It's been such a long time.

THE COURT: Miss Peters, can you give us an approximate date?

THE WITNESS: Well, I have here March 29th they met at my apartment to discuss something.

- Q I'm sorry. Could I have the date please?

 A March 29th they met at my apartment to discuss -that was Mr. Bianco and a friend of his.
- Q So that refreshes your recollection now?

 A No, but they never talked business in front of me,

 very rarely. So I would wonder why they were at my apartment
 talking.
- Q Did they discuss Mr. Rabinovich on that day?

 A They might have and they might not have.
- Q Well, Miss Peters, that's before your April

 13th or 14th day?
- A I said I would go back and start early. I'm starting with March because I will see the times Mr. Bianco had anybody in my apartment that might have had to do with the loan.
- Q Miss Peters, may I ask you another question so that maybe we can save some time.

Do you know whether you had any conversations with

Mr. Bianco about Mr. Rabinovich's financial needs before the date of April 13, 1967?

- A I'm not certain.
 - Q At the La Caravel?
- A I'm not certain. We didn't meet socially to discuss money.
- See if you can tell us when, approximately, the first time this conversaion was.
- A With Mr. Rabinovich and not with anyone else?
 - Q With Mr. Bianco.
- A I know that. I mean with him alone? With any other man? Because there was somebody else present.
- Whether he was alone or not, when was the first time you ever said to Mr. Bianco, Mr. Rabinovich needs money or words to that effect?
- A It could possible have also been on April 23rd. It could have been the 24th. I have an asterisk there that might indicate it was business and I really think, to answer the question properly, I would have to read that book thoroughly, not make maybe statements.
- Q Miss Peters, suppose we drop that and go to something for a minute.

Do you recall your first conversation with Mr. Rabinovich when money was discussed?

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A I can clearly recall it mentally, but not the date.

Q I'm not asking you for the date. Can you recall the conversation?

A Yes.

Q At that time did you have any social relationship with Mr. Rabinovich?

A Social? Personal or social?

Q Personal?

A No, just social.

Q What was your relationship with him prior to the time you met Mr. Bianco?

A I was his mistress and only his.

Q And I assume that relationship ended when you met Mr. Bianco?

A Yes, it did.

Q How often did you see him during the year 1967?

A Who.

Q Mr. Rabinovich?

A Probably quite frequently. I still see him. We're still very fine friends.

Q How often did you see him in 1967?

A If I was alone and he wanted to have lunch with me or dinner, I would see him but not certainly as frequently as I did.

A I would have to clarify that in order to protect 23

myself and Mr. Rabinovich. I would have to clarify that.

Q Can you answer it yes or no?

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- A 2 No. 3 Q You can't? No. 4 Q Was anyone present when Mr. Rabinovich asked 5 6 7
 - you to attempt to arrange a loan for him?
 - I don't believe so.
 - Q Just the two of you?
 - A Most likely.
 - Q Do you remember when that conversation was?
- No. 11
 - Q Do you remember whether it was during the year 1967?
 - A I'm certain it was. I mean, I'd known about his problems before that but it wasn't until he, after he met Mr. Bianco, that the suggestion was made that he might be able to be of assistance.
 - Q Was there any discussion at the La Caravel about money?
 - There might have been. A
 - Q Was there?
 - A I don't recall.
 - Q Don't remember?
 - A I don't recall.
 - Q That was the very first time the two of them

met?

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A No. I'm studying the book. They had met before that, but I believe it was sometime in March, but I never said that was the first time they had met. I said to my recollection.

- Q When is the first time they met?
- A It indicates here March 6th.
 - Q Where was that meeting?
- A At the 21 Club.
 - Q Who was present -- withdraw the question.
 - Was there any discussion about money at that time?
- A I don't believe so.
- Now, the second meeting, was that the April 13th meeting at La Caravel?
- A Yes. It would appear so.
- Q Was there any discussion about money at that meeting?
- A I don't remember.
- Q When was the next time you were present with Mr. Rabinovich and Mr. Bianco?
- A I didn't mention Mr. Rabipovich's name here down here because I didn't think that was going to be a very important point. So I'll have to go through the book now.
 - Q Were you present when money was discussed at

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- A I was present when I asked Mr. Bianco if he could help Mr. Rabinovich.
 - Q Was Mr. Rabinovich there?
- A No, not the first time.
- Q Were you present at any time when Mr. Rabinovich spoke to Mr. Bianco about lending money?
- A When I went to the office with him for the first time.
- Q And that was the time that they negotiated, the two of them, or agreed upon --
- A They negotiated without me.
 - Q You weren't there?
- A Not in person, no.
 - Q What office was that?
- A At 304 E. 45th St.
 - THE COURT: Whose office?
- 19 THE WITNESS: Mr. Rabinovich.
 - Q What business was he in, Miss Peters?
 - A They have a loan established business of leasing departments for milinary throughout the country.
 - Q By the way, was that the first time that Mr.
 Rabinovich had ever come to you and asked you to arrange
 a loan for him?

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Q Had anyone ever come to you and asked you to arrange a loan for them?

A No.

Yes.

Q Has anyone since that time asked you to come to you to arrange a loan for them?

A No.

Q Will you tell us when that meeting was that Mr. Rabinovich had at his office?

A I don't have that.

Q Can you tell us approximately when it was?

A I don't remember.

Q And can you tell us what year it was?

A It had to be probably in '67.

Q And can you tell us what time of the year it was?

A I can't. I do know it was '67.

Q But you're not sure whether it was January or december?

A No, I don't --

Q Were you present?

A When?

Q At the meeting at 45th Street?

A The first time I introduced them for that specific

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Q Was that subsequent to the meeting at the

A Like I said, I don't remember the date.

Q Was it subsequent or before the meeting at Club 21?

A Sir, I can only keep saying I do not remember the date.

Q Do you remember whether Mr. Bianco was alone or with someone else?

A He was alone.

reason, yes, for the loan.

La Caravel?

Q Was Mr. Rabinovich alone or with someone else?

A We were all three alone in a conference room.

Q Did you introduce Mr. Bianco to Mr. Rabinovich at that time or did they know each other?

A They knew each other.

Ω Does that indicate to you then that it was subsequent to the date at the 21?

A It could be.

Q Well, tell us if you will, please, when for the first time you introduced Mr. Bianco to Mr. Rabinovich?

A I just told you that I -- when I looked in the book it looked to me like March.

Q That was the 21?

A	March	6th,	it looks	to be,	because	if	you'll	note
that	many of	my pa	ges I le	ft blan	k.			

Q March 6th at the Club 21?

A Ah hm.

After reviewing that you now believe that was the first time that you introduced Mr. Bianco to Mr. Rabinovich? Is that correct?

Well, I'm looking here because Mr. Bianco went to his mother's funeral on the 15th and he was away for that length of time and before that, I show no memorandums here. We evidentally had a fight and I didn't put anything in the book.

Q So your best recollection is March 6th? Is that right?

A According to this.

Now, I ask you to refresh your recollection and tell me if you can whether there was any discussion on March 6th at the Club 21 about financial affairs?

A I said I did not believe it was that soon.

Q Now, was April 13th the next time that Mr. Bianco and Mr. Rabinovich were in each others company?

A Yes, according to the record.

Q That was at the La Caravel, was it not?

A Yes.

1	Peters-cross 74
2	Q And the 3 of you were alone?
3	A Yes.
4	Q Was there any discussion about financial
5	matters at that time?
6	A I don't recall that.
7	Q Now, you told us about a meeting at the
8	W. 45th Street Office of Mr. Rabinovich. Was that subsequent
9	to the La Caravel meeting?
10	A I don't recall the day. You would have to check
11	that with Mr. Rabinovich.
12	Q Miss Peters, we're trying to find out what
13	you remember. You told us they knew each other?
14	A Yes.
15	O Tell me what Mr. Rabinovich said to Mr. Bianco
16	amd what Mr. Bianco said to Mr. Rabinovich.
17	A You mean when I brought them to the office?
18	Q Yes.
19	A They talked for a few minutes and I excused myself.
20	Q Did they ask you to leave?
21	A Well, it was inferred that I was better off not being
22	there to discuss business.

- Did anyone ask you to leave? 23
 - I left on my own volition.

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Tell me what was said before you left the room. Q

May 3rd --

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- A That it was at least 10,000 dollars.
 - Q -- 1973 that the loan was \$10,000?
- A At least \$10,000.
 - Q Is that what you said?
- A Yes.
 - Q Are you finished?
- A Ah hm.

THE COURT: She was not present during the negotiations that he lent the \$10,000.

- Q It does say \$10,000 though?
- A Yes.
 - Q It doesn't say at least \$10,000?
- A No. \$10,000.
- Now, your best recollection is that it was somewhere between 10 and 20,000 dollars?
- A Yes.
- Q How do you know that Mr. Bianco loaned Mr. Rabinovich \$10,000?
- A Because he told me.
 - Q Mr. Bianco?
 - Yes, he did. He didn't tell me the amount. He said

 I've taken care of it. He discussed the fact of points that

 I do now. He suggested that perhaps at the beginning, before

 it even was negotiated, that there might be a half or one

point for me because I needed money. We both decided that would be unfair to Mr. Rabinovich, so as far as the exact amount of money, I know it was a minimum of \$10,000.

- Q You knew that from Mr. Bianco?
- A I certainly did.
 - Q And you knew it from Mr. Rabinovich?
- A I certainly did.
- Q Did Mr. Rabinovich tell you when he got the loan from Mr. Bianco?
- A He told me that Mr. Bianco came up with the money to his office.
 - Q When did he tell you that?
- A I don't know the date.
- Q When in relation to the first time you brought Mr. Bianco to the W. 45th Street office?
- A Sir, you're trying to pin me down to a date, I cannot give you.
- Q Miss Peters, I'm asking you questions. I'm not trying to pin you down to anything.

In relationship to the first time that you took

Mr. Bianco to the W. 45th Street office, when did you find

out from Mr. Rabinovich that money had been lent to him?

A bout a week, I would guess, because he needed the

money very badly at that time.

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O Tell me, Miss Peters, was that in person?

I wasn't there when he got the money. A

Q No. Did he tell you that in person?

Mr. Rabinovich? A

Q Yes.

I used to frequent his office. It might have been in person. He did tell me in person that he got the money, yes.

Q Is that the only loan you know that Mr. Bianco made?

No, he made two.

Q Another one to Mr. Rabinovich?

Yes. He did not make the loan. He negotiated the loan. Whether he made it or not I don't know.

Q Were the people from Queens you told us about?

Yes. A

O Do you know whether Mr. Rabinovich paid off the loan?

Evidentally he wouldn't be here now if he hadn't. A

> MR. LA ROSA: I move to strike that and I ask that the witness be instructed that a question like that can be answered, may it please the Court, relatively easy.

> > THE COURT: Yes. Leave everything except the

1		Peters-cross 79
2		evidence. Strike the rest. You mean yes?
3		THE WITNESS: Yes, sir.
4		Q Did he tell you that he paid off the loan?
5	A	Yes.
6		Q Did he tell you that he borrowed money from
7	anoth	er source to pay it off?
8	A	Yes.
9		Q Did he tell you who the source was?
10	A	I know who the source is.
11		Q Miss Peters, you told us there came a time
12	when y	you and Mr. Bianco didn't see each other?
13	A	Yes.
14		Q That was during the year 19
15	A	There were several times we had many quarrels.
16		Q I'm talking about the last one.
17	A	Yes.
18		Q 1967?
19	A	Ah hm.
20		Q When?
21	A	Shall I check it?
22		Q Please. If you can tell me day by
23	A	Day by day.
24		O Didn't there come a time when you ended your
25	relatio	onship with Mr. Bianco?

1		Peters-cross	80
2	A	We never ended it until the beginning of August.	
3		2 Beginning of August, 1967?	
4	A	Ah hm.	
5		Q Is that right?	
6	A	Ah hm.	
7		Q When was the next time you saw Mr. Bianco	after
8	that?		
9	A	After when, August?	
10		Q Beginning of August, 1967?	
11	A	I saw him.	
12		Q Just tell us when, please, if you can.	
13	A	We broke off the night before. I saw him the nex	t
14	day.		
15		Q After that next day, when was the next time	e
16	you say	w Mr. Bianco, if ever?	
17	A	Yes, I saw him by accident one day on 55th Street	•
18		Q When was that?	
19	A	Let's see. Maybe 3 years ago, 4. It was just whe	en
20	I moved	into my apartment which would have been 3 1/2 to	
21	4 years		
22		Q 3-4 years ago?	
23	A	Something like that.	
		Q And an accidental meeting on the street?	

Yes, because he was having lunch on the street and

waiting for a cab and I saw Nicky and we said hello.

O Tell me, Miss Peters, after the beginning of August, 1967, when was the next time you saw Mr. Rabinovich?

A As I say, I see Mr. Rabinovich all the time, even today, as a good friend.

Q Have you seen him throughout 1967?

A '67, '68, '69, right up until now.

Q Every year?

A We are best friends, sir. In the purest of ways, by the way.

Q Miss Peters, does he still give you money?

A No.

Q When was the last time Mr. Rabinovich gave you any money?

A Last time he gave me money?

Q Yes.

He wasn't -- oh, when I first started seeing Mr.

Bianco he was assisting me. He was giving me money. Then

when I told him that I was in love with Mr. Bianco, we

were having a relationship, I felt it was unfair to ask

his assistance and so, I stopped taking money from him or

accepting it.

Q You never took money from him again. Is that true?

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A		Ah hm.	The only	time th	at he e	ever did	anything	for
me	was	when I	attempted	to harm	myself	and he	took me a	way
to	the	Hampton	ns.					

- Q Miss Peters, have you ever been in the Psychiatric Institution?
- A Yes, sir, I have. I tried to kill myself.
 - Q Did you tell Mr. McCaffrey that?
- A I don't know. I didn't think it was public knowledge.

 I didn't think -- I just tried to kill myself.
- Q I didn't mean that. At any time, did you discuss with Mr. McCaffrey any factors in this case? Did you ever tell him that you were in a psychiatric institution?

 A He eventually found out. I told him when I got out of the hospital.
 - Q You told Mr. mcCaffrey?
- A I told someone. I don't know who it was.
 - Q Was it one of the agents?
- A Probably, because I was served a subpoena.
 - Q After you left the hospital?
- A No, during the hospital.
- Q While you were in the hospital. When were you in the hospital?
- A Just recently.

MR. LA ROSA: Would you mark that, please?

THE CLERK: One document marked for identification as Defendant's Exhibit I.

Miss Peters, I show you defendant's Exhibit I and I ask you if that is what you just referred to before, the subpoena being served upon you?

A I never even looked at it. It would have to be.

MR. LA ROSA: May Counsel have a side bar for a moment, please?

(A side bar discussion is held out of the hearing of the Jury.)

MR. LA ROSA: I make demand under Brady against Morgan for all information within the Government's file with regard to any psychiatric background of this witness or any other evidence that the Government might know. It's favorable to the accused.

THE COURT: If they have any.

MR. MCCAFFREY: I don't know of any, Your Honor.

MR. LA ROSA: Were you aware that she was in a psychiatric institution?

MR. MC CAFFREY: Your Honor, we were looking for -- we found out she was in Mt. Sinai Hospital a couple of months back, I guess. She went into the hospital voluntarily. The trial was imminent at

that time. We sent an agent up there and they spoke to one of the doctors there who said it wouldn't harm her in any way if they served this subpoena. The doctor said he would not serve the subpoena, she was out of the hospital a few days later, back on her own.

THE COURT: You don't have any records of the hospital?

MR. MC CAFFREY: No.

THE COURT: That's it?

MR. LA ROSA: I think they have the duty to notify me. I would have subpoensed the records.

THE COURT: Oh, no. If they have no information on the subject, they don't have any duty to notify you of the fact that somebody is in and out of a hospital.

If they haven't some sort of psychiatric condition records, that's one thing, but to now --

MR. LA ROSA: I assume they knew it though and in knowing it --

THE COURT: Wait a minute. It may or may not be beneficial to your client. She isn't the Defendant in this case. You're trying to make her that, but she isn't.

MR. LA ROSA: She's a witness. If it please the Court, I ask Your Honor to issue forthwith subpoena to this hospital.

THE COURT: You can present me with the subpoena and I'll sign it.

MR. LA ROSA: I ask Your Honor to stay the cross-examination at this point to enable me to get the material. I don't think I would have to go into this blindly.

MR. MC CAFFREY: I don't think the crossexamination should be stayed.

THE COURT: Of course it won't be stayed.

You can continue your cross-examination.

If, when you get the hospital records you find something you want to recall her on, you can recall her.

MR. LA ROSA: You note my objection to the proceeding?

THE COURT: Yes, of course.

(The following takes place in the presence of the Jury.)

Q Miss Peters, is that the first and only time you've ever been in a psychiatric institution?

A Well, the first time, no. They didn't admit me.

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Ö	That	is	the	first	time?
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- A That is actually -- I've attempted to kill myself twice. The first time they put me in, they let me out because they felt it was an accident.
- Q Can you tell us the dates, please, of those two attempts?
- A It was while Mr. Bianco and I had made a temporary estrangement. It was July 6th.
 - Q 1967?
- A Yes. And I went to West Hampton instead.
 - Q When was the second attempt that you made?
- A That was just now.
 - Q Will you tell us whe that was now.
- A You have it on the --
 - Q Is it the date of the subpoena, April 18, 19--
- A Three and a half weeks prior to that.
- Q That would bring us into the latter part of March?
- A Ah hm.
 - Ω What hospital were you in, Miss Peters?
- A Mt. Sinai.
 - Q Do you remember when you were admitted?
- A It was on a Sunday.
 - Q You don't remember the date now, though? Can

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you tell us how long you were there?

A Three and one-half weeks.

Q Can you tell us whether, after you were released from the psychiatric institution you have received treatment as an out patient?

A No, sir.

Q Can you tell us who the psychiatrist was who treated you?

A I was only treated twice by the psychiatrist because he left on illness. The rest of my stay was for relaxation and emotional fatigue.

Q And can you give us the psychiatrists name, please?

A Dr. Meyers.

Q Dr. Meyers?

A Ah hm.

Q MEYERS?

A Yes.

Q On July 6, 1967, you said you went to the Hamptons instead?

A Ah hm.

O Does that mean that you didn't attempt to take your life at that time?

A It was really a very shallow attempt.

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Q You changed your mind?

No. It was an attempt enough to have the doctor come over and bandage my wrists, but it wasn't serious enough for him to doubt by validity or the fact I didn't need hospitalization. So I went to West Hampton instead.

And that was based, that July 6, 1967, attempt was based upon the fact that you and Mr. Bianco had had a separation of some sort?

A We had a very serious fight.

Q Getting back to the money, Miss Peters, the \$10,000, can you tell us when you found out that the \$10,000 had been repaid to Mr. Bianco?

A When it was that I found out?

Q Yes.

A The approximate date, I can't give to you, but I can tell you it had to be several months. The exact date I cannot tell you.

Q Several months what, Miss Peters?

A From the inception of the first loan until the second loan was negotiated. A matter of months. Could have been 4, 5.

Q Was it during '67?

A Yes.

No question about that?

Did you talk to him about the trial?

No. A

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Did you talk to him about the loan?

A We mentioned it.

Were the two of you alone at that time?

A We were on the phone.

Did you go over the dates, times and places
that loan was made?

A No, sir. We just mentioned the fact that the loan would come up.

Q Did you mention the amount of the loan?

A No.

O Did you mention the date when the loan was repaid?

A No.

Ω Did you mention the new loan that had been taken to repay this first loan?

A No.

Q When, before last week was the next time, working backwards, that you met Mr. Rabinovich?

A I haven't seen him for quite a while, but we talk on the phone constantly.

Q Tell me when the phone call before last week was. When you say constantly, do you mean two, three times a week?

A If I feel like it, I pick up the phone in the morning and I say good morning. If I don't, I don't, but it would not stand on principal.

Q When was the last time you saw him face to face?

1		Peters-cross	9
2	A	Oh, I was up at his office about 4, 5 months.	
3		Q Five, four months ago?	
4	A	Yes.	
5		Q Did you see him in the hospital?	
6	A	No.	
7		Q Did he help you out with respect to the	
8	hospit	talization?	
9	A	No, sir. I have hospitalization.	
10		Q Did he know you were in the hospital?	
11	A	Yes.	
12		Q Had you called and told him that you were	
13	in the	hospital?	
14	A	Yes.	
15		Q Tell me, on the last occasion you were	
16	togeth	er, did you talk about the loan that he allegedly	
17	gave to	o him?	
18	A	The last time that I saw him in person, we did not	:
19	discus	s Mr. Bianco, period.	
20		Q How many times on the phone, in the last	
21		eks, have you discussed the details of this loan to	,
22	him?		
23		MR. MCCAFFREY: Object to the form of the	
24		quesiton.	

THE COURT: Wait a minute. Read back the

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question.

(Question read back by Reporter as requested.) THE COURT: That presupposes she has and she testified as I recall, it's the Jury's recollection which will control to the contrary, but I'll allow it.

Can you answer that, Miss Peters? Q THE COURT: Did you discuss --

THE WITNESS: We did not discuss the details of the loan, only inasmuch as I said to him it would probably come up at the trial.

Q Did he agree with that?

Yes.

here?

No.

O Did he tell you that he was under subpoena?

Did he tell you that he was going to testify

He had to tell me, I suppose. I mean, he is going to testify.

Q Did he tell you that?

Q

When ?

Yes.

When is he going to testify?

When did he tell you that he was going to Q

testify?

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A I had called him some time last week and advised him that I was all right, everything was going along fine and he said to me that he was going to testify but he wasn't quite sure when. He was waiting to be called.

MR. LA ROSA: Would you bear with me for a moment, please.

THE COURT: Sure.

- Did you mention to us, Miss Peters, that during the year 1967 you were aware that Mr. Bianco's mother had died?
- A Yes.
 - Q Can you tell us when that happened?
- A When she died?
- 16 Q Yes.
 - A February 15, 1967.
 - Q Were you in Providence at that time?
- 19 A No.
 - Q Can you tell me how long Mr. Bianco was in Providence at that time?
 - A It could be anywhere -- I've nothing noted here for about 18 days, but I don't think he stayed that long. It would be more like 10 or two weeks.
 - Ω Do you know whether Mr. Bianco's father was

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alive at that time?

A No. He was dead.

Q Do you know when he died?

No, sir. He was -- he had passed away before I knew him.

Q When you went to Mr. Bianco and asked him if he'd lend money to Mr. Rabinovich, did you ask him if he would lend the money or did he know someone who would lend the money?

I asked him if he could.

Q Were those the words you used?

Well, I couldn't quote the exact words.

Q Did you tell him that you were talking about lending someone some money?

I told him, Mr. Bianco, that I knew that Mr. Rabinovich needed money and could he find a way or could he help him.

Q What did Mr. Bianco say?

At first he said, I'll think about it, I'll see. He didn't give me a definite yes right away.

Ω Did you go to anyone else and ask them to lend Mr. Rabinovich money?

No.

Q Was Mr. Bianco the only one you mentioned this to?

A The only time other than that I've asked for Mr.

Rabinovich's assistance was about 3 years ago and I went
to a business firm who was thinking of buying another firm.

They're a conglomeration and I asked this person if they
could possibly help him.

Q Did they help him?

A They found the business didn't do enough per year to take him into their corporation, so they couldn't.

Q Apparently, this business did not go bankrupt then in 1967?

A His business just went bankrupt.

What do you mean by just went bankrupt?

A He had been going bankrupt for at least, as I know, at least 6, 7 years and he has always managed to come through, but there came a time when, I guess, about a year ago, he just couldn't make it any more. When I use the term "bankrupt" I say bankrupt meaning if he says he's going to have to go bankrupt, declare, maybe possibly going out of business, he kept getting extensions but this time he couldn't.

MR. LA ROSA: Thank you. I've nothing further.

MR. MC CAFFREY: I have nothing further. No
further questions.

THE COURT: Thank you Miss Peters.

(The witness is excused.)

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THE COURT: What do you want to do with her diary?

MR. MC CAFFREY: Pardon me, sir.

THE COURT: Who's going to keep custody of her diary, books?

MR. MC CAFFREY: I think we should keep them,
Your Honor, in view of the fact they've been marked
for identification.

THE COURT: All right.

MR. MC CAFFREY: Mr. Rabinovich, please.

JOSEPH RABINOVICH, having been first duly sworn according to law, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MC CAFFREY:

O Mr. Rabinovich, what is your business or occupation, sir?

A I'm a business executive.

O What line of business are you in?

A I'm with F. T. Duzz, a company which operates various types of businesses.

Q Was there a time prior to that when you were in business for yourself?

A Yes.

THE COURT: All right.

When did you first meet Mr. Bianco, Mr. Rabinovich?

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When?

I imagine it was in the late 60's, probably. '67, some year in that period.

Q How did you happen to meet Nicholas Bianco? A young lady I knew, Miss Shayne Peters, called me A up and asked if she could come up with that gentleman with whom she was keeping company at the time and I think she said she had hopes of marrying him or something at that time. I don't know, but she wanted me to meet him, to introduce him to me.

Where did this meeting take place, sir? Where?

0 Yes.

In my office.

All right. Did you meet Nicholas Bianco on any occasion after that?

Yes. I think he was in my office on another occasion after that.

Were there any occasions when you went out socially with Shayne Peters and Nicholas Bianco?

I didn't have any recollection of it, but I'm told that I probably did have a lunch or dinner with the two of them, but actually I didn't recall it. I probably did, but

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I don't recall it.

Q Did you have any further meetings with Nicholas Bianco at your office?

A I said I'd seen him.

Q After that first meeting?

A Yes. After that, yes.

Q All right. And approximately when did that second meeting take place, Mr. Rabinovich?

A Oh in that same period of time. Not too long after that, I don't think, after that first meeting.

Q What year was it?

A I think it was 1967 or '66 or '67. I have no record of the exact time.

Now, did you have any discussion at any time with Nicholas Bianco about business matters?

A Would you explain what you mean by business matters?

All right. Did you, at any time discuss making a loan from Nicholas Bianco?

A Yes. Yes, I did.

Where did that discussion take place, sir?

A In my office on that, I think, second visit.

Q Did you, in fact, come to some arrangement as far as that loan was concerned, with Mr. Bianco?

A Y.es.

Q What was the amount of money that he agreed to loan you?

A I believe it was \$10,000. I'm reasonably sure that was the amount.

Q What were the interest payments to be on that loan, sir?

A I really don't remember. It was substantial. I can't remember exactly how much.

O All right, sir. Now --

A It was more than the normal rates.

2 Do you recall being interviewed by special agent Nahmias of the Internal Revenue Service on August 15, 1973?

A Yes, sir, I do.

Did you sign an affidavit on that occasion?

I show you this and ask if that is your signature, Mr.

Rabinovich?

A Yes, sir.

Was that statement made, under oath, sir?
A Well, I don't remember if it was under oath, but I signed it.

O It says there --

A Yes. I would say yes, right here. (Witness indicating)

MR. MC CAFFREY: I request this be marked for

identification.

THE CLERK: One statement marked for identification as Government's Exhibit 46.

Q Did you tell Agent Nahmias on that occasion, and I quote --

MR. LA ROSA: I object to that.

THE COURT: No. You can ask if it refreshes his recollection as to whether he told him as to what ever he wants to bring out.

Q Having looked at that, Mr. Rabinovich, does that refresh your recollection as to what you told Agent Nahmias on that occasion?

MR. LA ROSA: Objection.

THE COURT: I'll allow it. You don't have to say what it is. Yes or no? Does it refresh your recollection or not?

MR. IA ROSA: I'm talking about the latter part of the answer.

THE COURT: He hasn't answered yet. The question is whether he recollects whether this is what he told Mr. Nahmias. It's either yes or no.

THE WITNESS: Yes, sir. This is what I told him.

Q All right. Now, having refreshed your recollec-

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tion, Mr. Rabinovich, what did you tell him the interest payments on that loan were?

MR. LA ROSA: Objection to the form.

THE COURT: Yes. Do you have any recollection now what the interest was?

THE WITNESS: No. I remember what the weekly payments were, Your Honor.

O How much were the weekly payments?

A I said in here.

MR. LA ROSA: I object.

THE COURT: Not what you said in here, not that you remember --

THE WITNESS: I recollect at the time I gave this information that it was, I think, \$250 a week.

MR. LA ROSA: I object to that.

THE COURT: No. I'll allow it. His recollection now is \$250 a week on a \$10,000 loan. Right?

THE WITNESS: Yes, sir.

Q And for how many weeks did you make those payments, sir?

A Well, I said here and I -- again it's my recollection, about 8 weeks.

Q To whom did you make those payments?

A I don't know the names of the gentlemen. All right?

Q All right. To whom did you make that repayment?

- There were several men. There were several men --A I asked you --
- A -- that came to my office.

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Q I ask you again to look at the statement, Mr.

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Rabinovich. Look at that statement sir. Does it refresh your memory as to whom that repayment was paid?

A Inasmuch as I borrowed the money from him and with him I kept referring to him as the person to whom I repaid the money.

Q Did you --

MR. LA ROSA: I object to that and move it be stricken.

THE COURT: Strike out the first answer and you don't recollect to whom you repaid --

THE WITNESS: I did not recollect.

Q Was it your understanding you were repaying in to Nicholas Bianco?

A Yes, sir.

Q What was the source, sir, from which you repaid that money?

A The source?

Q Yes.

A I had borrowed money legitimately from another source.

MR. MC CAFFREY: I have no further questions.

MR. LA ROSA: May I have some time to go

over this?

CROSS-EXAMINATION

BY MR. LA ROSA:

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	Q	Mr.	Rabinovich	, will	you	tell	us,	please
what	business	you	were in in	1967?				

- Yes. I was president of Oguss & Oguss Company.
 - Q What kind of company was that?
- We were in the business of leasing millinery and wiglets in department stores.
 - Q Will you tell us what that means, please?
- What that means?
- Q Yes. Explain it to us in simple language so we'll all understand.
- They're concession stands. Concessions to operate in stores, those particular items.
- Will you tell me, sir, in 1967, how many of those leases that firm had?
- I would say perhaps 300. A
- Q Will you tell me in 1967, how many employees that company had?
- Throughout the country, I would say somewhere around 1500.
- Will you tell me what your position in the company was?
- I was President.
 - Q Was that a stock corporation?
- A Yes.

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Q Besides being president, did you hold any of the stock?

Yes.

will you tell me what you held?

50% interest. A

Q I assume it was a private corporation?

A Yes, it was.

Q Did you have the 50% of the stock in your own possession in 1967?

A Yes.

> It wasn't placed as a pledge for the bank? Q

No. A

> It hadn't been sold to anyone else? 0

No.

1967?

Will you tell me where your office was in Q

Yes. 304 E 45th Street.

Will you tell me who you banked with in 1967 or, referring it to you, I mean the firm?

There were several banks. Chase Bank, the Federation Bank and Trust which was later taken over by another bank and possible the Bankers Trust. There were several banks. Some were payroll accounts, some were merchandise accounts.

Did you have any lines of credit with any of

2	these	banks?

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- A Did who have?
 - Q The firm.
- A In '67 I'm not sure now whether we were doing business with a factoring concern or whether we were with the banks.
 - Q What do you mean by factoring concer., Mr.

Rabinovich?

- A Private Bankers.
 - Q Will you tell the Jury what that means?
- A I beg your pardon?
 - Q Will you tell the Jury what that means, please?
 - A Tell the Jury what that means?
- Q Yes. Private Factor.
 - A It means when your statement, financial statement is not strong enough to justify a bank loan, yes, the private bankers give you the money at higher interest than normal rates.
 - Now, will you tell me whether you recall whether in the middle of 1967 you were dealing with private factor or in fact, banks?
 - A I really can't recall at this moment.
 - Q If you were dealing with a private factoring company, do you recall which one it would be?
 - A No, I do not.

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Q Had you dealt with more than one in that time period?

A There might have been more than one, on more than one, might have been one or two.

Will you tell me, sir, if you know, what the total credit line was in 1967 for that firm, whether it be with a private factoring company or with a respective bank?

A I would say roughly a half a million dollars.

Q Who was the other 50% partner in the business?

A My sister.

Q Was she active in the business as well?

Partially. I wouldn't say active, no.

Q So you basically ran the business then. Am I correct?

A That is correct.

Q How many people had the right to sign checks in that firm?

A Perhaps a half a dozen.

Q Of those half a dozen, were any of them -- withdraw the question.

Was your sister one of those half a dozen?

A Yes.

Q Did she actually sign checks in 1967?

A		I don'	t kno	ow wi	hat	period	time	she	bec	ame	: 111	and
not	too	well,	but	she	was	signing	j che	cks	for	a	long	period
of y	year	s.										

- Q When you met Mr. Bianco for the first time, do you recall where it was?
- A Where it was? In my office.
- Q By the way, when you pointed out to the table, you didn't mean I was the individual, you meant --
- A Mr. Bianco, the one on the right, I believe I identified.
 - Q Is that what you meant by that?
- A Yes. The gentleman on the right, I said.
- Q Do you remember when the first meeting was when you were introduced to him?
- A I believe I identified the time, I specified the time. It was one afternoon in my office, in that year.
- Q You also told us that there were other meetings in your office. Is that right?
- A I said probably another one, yes, after that. Soon after that.
- O Then you were asked if you had any recollection of social meetings with Mr. Bianco and I think you told us that you did not recall any. Is that right?
- A I said I did not recall. It was possible though
 that I may have gone to lunch or dinner with Miss Peters and

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Q Didn't you then tell us the following: Mr.
Bianco, but I've been told that there were social meetings --

A I beg your pardon. I didn't hear your question.

Q Did you, when you told us this a few moments ago, say --

A Yes.

Mr. Bianco.

I don't have any recollection of social meetings with Mr. Bianco, but I've been told that there was
social meetings.

A Yes.

Q Did you say that?

A Yes.

Q Who told you that?

A Miss Peters.

Q When did she tell you that?

A I don't know exactly when it was.

Q Was it recently?

A Not too recent, some months back.

Q Is that when the two of you sat and discussed what the both of you could recall about this?

A I didn't sit and discuss anything with her about that.

She --

Q Tell me when that conversation was with Miss

2 Peters?

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- A I don't know. I can't tell you when it was.
- Q Mr. Rabinovich, was it in person or on the telephone?
- A On a telephone.
 - Q Did you discuss at that time the details of the loan?
- A At which time?
- Q With Miss Peters, the last time you spoke to her?
 - A No.
 - Q Did you discuss how many times you had met Mr. Bianco?
 - A In this conversation?
 - Q With Miss Peters, yes.
- 17 A No.
- 18 Q Did you discuss where you met Mr. Bianco?
- 19 A No. I knew where I met him. I told you, I met him 20 in my office.
 - Q Well, Mr. Rabinovich, how did it come about that Miss Peters told you in that telephone conversation that there were social meetings between you and Mr. Bianco?

 A Miss Peters has been a friend of mine for many years and she has continued to be a friend, by calling me every

occasional two, three months to see how I am. She actually came to the funeral services of my wife's last May as many of my other friends did.

- Q All right. Now, I'll ask you the question again. How did it come about that Miss Peters said to you on the telephone, you're mistaken?
- A I don't know how it came about.
- Q What were you talking about that Miss Peters would say to you Mr. Rabinovich, you had social meetings with Mr. Bianco or words to that affect?
- A Miss Peters is a young lady who likes to talk a lot and she rambles in different things and gets on different subjects and she perhaps made some comments about Mr. Bianco and in the course of the conversation I said, you know, I don't know if I'd recognize him if I saw him tomorrow. I haven't seen him in so long. Outside the time in my office I don't think I ever saw him again. She said, oh yes, I think you once had dinner or lunch or dinner with us.
- Q That's how that conversation -- did she tell you where --
- A I didn't ask her where.
 - Q Did you ask her when?
- A No. I didn't ask her when. I just didn't remember it.

 MR. LA ROSA: This is a good time to break,

THE COURT: Are you going to be some time longer?

MR. LA ROSA: I don't know, but I would like a chance to study these a little more in depth.

THE COURT: All right.

Your Honor.

Ladies and gentlemen, we'll take a luncheon recess until a quarter past two. Don't discuss the case. We'll see you then.

(The Jury is excused at 1:00 P.M.)

THE COURT: Mr. McCaffrey, how close are we until we're finished?

MR. MC CAFFREY: Well, Your Honor, I anticipate unless Mr. Rabinovich's course continues for a considerable length of time, that the Government will finish up this afternoon. We have several more witnesses. I don't think their testimony is going to be lengthy. I expect to finish today.

THE COURT: I take it -- well, without making
-- revealing your hand, you don't have to, but are
you going to call witnesses from Hanover?

MR. MC CAFFREY: Yes, Your Honor.

THE COURT: Are you going to introduce prior returns because on prior failure to file --

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MR. MC CAFFREY: Yes, Your Honor.

THE COURT: And now, what position do you now want to take with respect to at least as to 1966?

MR. MC CAFFREY: With respect to 1966, in view of gifts to Shayne Peters by the defendant and in view of gifts of money to which she testified in view of expenses involved in dinner dates and things of that nature, I think that would clearly come within the prior similar act group.

THE COURT: You want such an instruction at the time?

MR. MC CAFFREY: Yes. I so request, Your Honor.

THE COURT: All right.

MR. MC CAFREY: Your Honor, the Government has some requests to charges. Might as well hand them up now.

THE COURT: Would be kind of nice.

MR. LA ROSA: May I ask what you plan on doing if the testimony is completed at 4:00 o'clock? Will You permit us the next morning for summations?

THE COURT: How long are you going to be on summations?

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MR. LA ROSA: 35 minutes.

MR. MC CAFFREY: I would imagine 45 minutes, it would take.

THE COURT: If that's a fact, then we'll probably start tomorrow on summations and the Charge right after. If you're going to each take 2 1/2 hourse, I might start you out this afternoon.

MR. LA ROSA: I'm saying 35 minutes.

MR. MC CAFFREY: Won't be any 2 1/2 hours for me.

THE COURT: I'd like to finish tomorrow.

I have another case scheduled to start soon thereafter

MR. LA ROSA: It is nice to go overnight on summations.

THE COURT: I understand. I appreciate that.

I used to do that sort of thing myself once.

MR. LA ROSA: Some Judges forget.

THE COURT: Well, my memory is not that short.

I haven't been here that long.

All right. Gentlemen, I'll see you this afternoon.

(Luncheon recess is taken at 1:05 P.M.)

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(Jury enters the Courtroom at 2:20 P.M.)

JOSEPH RABINOVICH, continued

CROSS-EXAMINATION Cont'd.

Cross-Examination.

BY MR. LA ROSA:

THE COURT: Good afternoon. Be seated, please. (Witness, Joseph Rabinovich resumes the stand.)

Mr. Rabinovich, the first time you spoke to Nicholas Bianco about borrowing money, did he tell you that he would see if he could arrange for you to borrow some money from some other people?

He said he would see if he could arrange it for me, yes. That's right.

Did he imply to you that he was going to some other people to see if he could help you out in borrowing money?

Could have been.

Any question about that?

Well, probably not in his mind. I don't know. He said, as I repeat, he would arrange it.

Mr. Rabinovich, there came a time then when you saw Mr. Bianco again; isn't that correct?

Ah hm. A

1		Addition Closs
2		Q He actually brought some people to you who
3	agreed	to lend you this money?
4	A	Brought the people who gave me the money.
5		Q How many people came to your office that
6	- day?	
7	A	I think there were two people.
8		Q Do you remember their names?
9	A	No.
10		Q Did they hand you the \$10,000?
11	А	Yeah.
12		Q How many times did you see those two men
13	again,	sir?
14	A	Each week when time came to collect the weekly
15	paymen	t.
16		Q And you gave one of these two men the
17	\$250 e	ach and every week; isn't that right?
18	A	That's right.
19		Q Then there came a time, Mr. Rabinovich, when
20	you re	paid the \$10,000; isn't that right?
21	A	Right.
22		Q And would one or both of these men come to
3	your of	fice to get that \$10,000?
4	A	To the best of my recollection, I think both of
	them we	ere there. I'm not absolutely certain

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Q Was Mr. Bianco with them?

I don't think so.

MR. LA ROSA: Thank you, Mr. Rabinovich.

No other questions.

REDIRECT EXAMINATION

BY MR. MC CAFFREY:

Q Mr. Rabinovich, did you discuss your testimony during the lunch hour with Defense Counsel?

A No.

I was standing out here, where you asked me to, to wait for you, and the gentleman who was just interrogating me and came over and said as long as we're standing in the hall, I might as well introduce myself to you. He did. We shook hands outside there.

Q Did you have any discussion with the Defendant during the lunch hour, Mr. Rabinovich?

A No. Absolutely not.

O Mr. Rabinovich, when you repaid this loan, what was the amount that you repaid to Mr. Bianco?

A The full amount.

MR. LA ROSA: I object to the form of the question.

THE COURT: No. I'll allow it in light of your questions.

THE WITNESS: Your question, Mr. McCaffrey, the amount I paid back was the full amount, the \$10,000.

To whom did you pay this to, Mr. Rabinovich?

A There were several men who came up to see me who had been coming to see me on a weekly basis. I don't know who they are or what their names are.

You testified earlier, did you not, that you borrowed this money from Nicholas Bianco; isn't that right?

A Yes. Well I asked him for the loan. He said he would arrange it. I assumed he was the one handling it. I had no reason to believe otherwise.

Q Didn't you say in your statement, Mr. Rabinovich, "that he gave this money to me in currency"?

MR. LA ROSA: Objection.

THE COURT: Overruled.

THE WITNESS: He means whoever was there gave me the money. I don't know if it was Mr. Bianco or someone with him at the time.

Q Was it your understanding the loan was from Mr. Bianco?

A I really don't know. I requested the loan from him.

He said he would arrange it.

Q I again show you --

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- Q -- your statement, Mr. Rabinovich.
- I remember what I wrote, what I said.
 - That was a sworn statement, was it not?
 - Was that statement true when you signed it?
- Yes. For all intents and purposes I felt that was correct or I wouldn't have signed it.
 - That was several years ago; was it not, sir?
- Yes. It was several years ago.
 - All right. Having looked at that --
- It's a matter --
- Did you state at that time that you borrowed this money from Nicholas Bianco?
 - Q Was that the fact, sir?
- I just explained to you, Mr. McCaffrey, it's a matter
 - Is that --
- A matter of semantics. He was the man I knew. He was the man who said he'd arrange the loan. I referred to him in the first person as the one who arranged and gave me the money.
 - THE COURT: Did you put anything in there about

some other men?

THE WITNESS: I don't know whether I told the folks that or not.

THE COURT: Take a look.

THE WITNESS: At the time -- no, sir. No, Your Honor. It isn't in here but I think in my discussion I had mentioned it to the agents when he came to talk to me.

THE COURT: You didn't put it in there?

THE WITNESS: At that time I was answering questions. He was writing.

THE COURT: Those are the answers you gave?

THE WITNESS: These are the answers to the questions he gave me at the time.

THE COURT: All right.

- Q Did you say anything in that statement, Mr. Rabinovich, about paying this money back to anyone else other than Bianco?
- A No, I did not. I did not. I just explained that.
- Q The payments of \$250 per week, Mr. Rabinovich, were they entirely interest?
- A Yes. Yes, sir, they were.

MR. MC CAFFREY: Thank you. I have no further questions.

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RECROSS-EXAMINATION

BY MR. LA ROSA:

O Mr. Rabinovich, you did talk to me on the

A You introduced yourself to me, yes.

luncheon break outside in the hall?

Q Before the luncheon break, Mr. Rabinovich, had you ever talked to me?

A No.

On your direct testimony, that's when Mr.

McCaffrey was asking you the questions before I crossexamined you, you were asked about repayment. Did you state
at that time "repayment was made to several men, I do not
recollect who I paid."

A I believe I said that.

Q Was that true?

A Yes.

MR. LA ROSA: I have nothing further.

RE-REDIRECT EXAMINATION

BY MR. MC CAFFREY:

Q All right. Did you say in that statement,
Mr. Rabinovich, "I then borrowed money from another source
and repaid Nick the entire sum due of \$10,000."?

Yes. That's the way I worded it. Yes, sir.

MR. MC CAFFREY: I have nothing further.

Rabinovich-re-recross RE-RECROSS-EXAMINATION 2 BY MR. LA ROSA: 3 Q Is that your handwriting, sir? 4 A I beg your pardon? 5 Q Is that your handwriting on that statement? 6 The words here -- this statement --7 MR. LA ROSA: Marked Exhibit --8 MR. MC CAFFREY: 46. 9 MR. LA ROSA: 46 for identification. 10 Q Is that your handwriting? 11 A No. 12 Q You didn't write that up? 13 A No. This is my signature. 14 Q But you didn't write out the body of this 15 statement? 16 A No, I did not. 17 MR. LA ROSA: I have nothing further. 18 RE-REDIRECT EXAMINATION 19 BY MR. MCCAFFREY: 20

Q But is this statement prepared on the basis of an interview between you and the Internal Revenue Agent, Mr. Rabinovich?

A Yes, sir.

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Q Did you read this statement before you signed

A Yes, sir.

Q Is that your signature that appears at the bottom of the statment?

A Yes, sir, that is my signature.

MR. MC CAFFREY: Nothing further.

THE COURT: You may step down.

(The witness is excused.)

MR. MC CAFFREY: The Government calls Gael

Conrad.

GAEL CONRAD, having been first duly sworn, according to law, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MC CAFFREY:

- Q Mr. Conrad, by whom are you employed?
- A Playboy out of Chicago.
 - Q In the Chicago Office?
- 20 A Yes, sir.

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- Q Are you here in response to a subpoena ducas tikam, to produce personal records pertaining to the employment of Francesca Coates with the Playboy organization?
- A Yes, sir.
 - Q Do you have those records with You?

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1	Pellard-direct 127
2	RICHARD E. PELLARD, JR., having
3	been first duly sworn according to law, was examined
4	and testified as follows:
5	DIRECT EXAMINATION
6	BY MR. MC CAFFREY:
7	Q Mr. Pellard, by whom are you employed?
8	A United States Treasury Internal Revenue Service
9	and Overseas Service Center, Andover, Massachusetts.
10	Q What is your position with them?
11	A I'm Senior Accounting Technician.
12	Q And as a Senior Accounting Technician, sir,
13	what are your duties?
14	A I supervise a group of employees that researches
15	the records of the Internal Revenue at the request of other
16	IRS employees.
17	Q How long have you occupied this position?
18	A Five years.
19	Ω How long with the IRS Service all together?
20	A Eighteen years.
21	Q Will you tell us, sir, the area for which the
22	Andover Service Center is responsible?
23	A New England and Northern New York State which

Is that the current responsibility of the

would be the district of Alabama and Buffalo.

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Service Center?

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A Yes, sir.

Q Has that responsibility been different in past years?

A Yes, sir. We also used to handle the Brooklyn and Manhattan Districts.

Q All right. Do you know, sir, when that change was made?

A Yes, sir. July 1, 1973.

Q Now, Mr. Pellard, did you conduct a search for the tax return in the name of Nicholas L. Bianco about the year 1967?

A Yes, sir, I did.

Q Can you tell us, sir, what districts your search covered?

Well, there were two separate searches conducted.

A search done in 1972 that covered the entire country. There was also a search that I did recently that covered the District of Providence Rhode Island, Connecticut, Brooklyn, New York and Manhattan.

Q All right. With respect to the search that you did most recently, Mr. Pellard, did you find any record of Nicholas Bianco having filed a tax return for the year 1967 with respect to any of those districts?

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2	A No, sir. There was no record of a return filed.
3	Q Do you have a certificate of assessments and
4	collection with respect to the year 1967?
5	A Yes, sir, I do.
6	Q Do you have that with you?
7	A Yes, sir.
8	Q May I see that please?
9	All right. Do you know the individual who signed
10	that certificate?
11	A Yes, sir, I do. That is my immediate supervisor.
12	Q What is his name?
13	A Agnes T. Conway.
14	Q Was this certificate prepared as a result of
15	that search?
16	A Yes, sir, it was.
17	MR. MC CAFFREY: I request that this be marked
18	as Government's Exhibit 48 for identification.
19	THE CLERK: So marked.
20	MR. MC CAFFREY: And I offer it in evidence.
21	MR. LA ROSA: I have no objection.
22	THE COURT: To be received.
23	THE CLERK: Government's Exhibit 48 received
24	in evidence.
	O Did you conduct a contab Ma Dalland San

tax return of Nicholas L. Bianco filed for the year 1968?

A Yes, sir, I did.

Q And with respect to what districts did you make this check?

A Again, there were two separate searches done; one in 1972 in which we searched the entire country and I recently conducted a second search conducting the districts of Brooklyn and Manhattan.

Q I show you Government's Exhibit 2, previously admitted into evidence and ask you does that refer to the search of the entire country?

A Yes, sir, it does.

Q Is that your signature on that certificate?

A Yes, sir, it is.

Q All right, sir, will you tell us how that search was made?

A request came in from an employee of the Service asking that research be conducted in order to find if there was or was not a tax return filed. We, in turn, sent a request on to the Mottenberg Center in Mottenberg, West Virginia. That is a small computer center in which there are 10 service stores in the country. Each service center maintains its own record and sends a copy of that record on to the Mottenberg Center. There, in the Mottenberg Center,

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all they do is just compile the records for the 10 Service Centers into one master record and we get a printout on that master record. That enables us to check the entire country for search.

- So you get an actual print out of the film that combines all the files in the country?
- A Yes, sir, we do.
 - Q Did you examine that printout yourself?
- A Yes, sir, I did.
- Q Did you find any record of Nicholas L. Bianco having filed a tax return for the year 1968?
- A Shere was no record of a tax return filed.
- Q So that, am I correct in stating then that covers Brooklyn, Manhattan, Providence and Connecticut, all other districts in the country?
- A Yes, sir.
- Do you have a separate certificate pertaining to the year 1968 for the Brooklyn, Manhattan office?

 A Yes, sir, I do.

MR. MC CAFFREY: Request this be marked for identification, as Exhibit 49 and I offer it in evidence.

THE CLERK: So marked.

MR. LA ROSA: No objection.

THE CLERK: So marked. Government's Exhibit 49 received in evidence.

- Mr. Pellard, did you make a search for the year 1969 to determine whether or not Nicholas L. Bianco had filed any tax return for that year?
- A Yes, sir, I did.
- A Again, there were two separate searches done; one in 1972 which covered the entire country and also a recent search covering the Brooklyn and Manhattan Districts.
- Q All right. I show you a transcript of account previously admitted into evidence as Government's Exhibit 2S. Is that your signature on that certificate, sir?

 A Yes, sir, it is.
- Q Does that pertain to the nationwide search which you refer?
- A Yes, sir, this does.
- Q Did you follow the same procedure in making that nationwide search as you followed making the search for the 1968 return?
- A Yes, sir.
- Q Did you make a search, Mr. Pellard, for the year 1970?
- A Yes, sir, I did. There were two separate searchs

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done in 1970. There was a search done through the National Computer Center done in 1972 and we also did a recent search covering the districts of Brooklyn and Manhattan.

I show you Government's Exhibit 2B, previously admitted into evidence. Is that your name on that certificate, sir?

- A Yes, sir, it is.
 - Q Does that refer to the 1970 search?
- A The 1972 search.
 - O I mean to the 1970 return?
- A Yes, sir, it does.
- Q Was that search made in the same way as the other national searches that you referred to?
- A Yes, sir.
 - Q For '68 and '69?
- A Yes, sir.
- Q Was any return found as a result of those searches for the year 1969 and the year 1970?
- A No record of 1040 for that year.
- Q Any record of any kind of tax returns over the years?
- A No, sir.
- Q All right. Did you prepare a separate certificate for the Manhattan and Brooklyn Office for the year 1970?

A Yes, I did.

Q Do you have that with you?

A Yes, sir, I do.

And this is the separate certificate for the year 1969?

A That is correct.

MR. MC CAFFREY: Request these be marked for identification as Exhibits No --

THE CLERK: 50.

MR. MC CAFFREY: 50 and 51.

THE CLERK: So marked.

MR. MC CAFFREY: And I offer them in evidence.

MR. LA ROSA: I have no objection.

THE CLERK: Government's Exhibits 50 and 51 received in evidence.

Q Did you make a search for the year 1971, Mr. Pellard?

A Yes, sir, I did. There were two searches made for the year 1971. One done in 1972 and one done recently.

The search that was done in 1972, to the best of my knowledge, only covers the Brooklyn District. There was also another search done recently covering Brooklyn and Manhattan.

Q All right. Do you have the certificate covering Brooklyn and Manhattan?

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A	Yes.	sir,	т	do
**	1601	OTT !	-	1100

MR. MC CAFFREY: Request this be marked for identification.

THE CLERK: Government's Exhibit 52.

MR. LA ROSA: No objection.

THE COURT: No objection. It shall be received.

THE CLERK: So received. Exhibit 52 received in evidence.

- Q I show you Governments Exhibit No. 3 already admitted into evidence, Mr. Pellard, and ask you if you can tell us what that is, please?
- A Yes, sir. I think this is a certificate of assessment and payment covering a prior search done in 1972.
 - Q What area does that cover, sir?
- A It appears to cover the Brooklyn District.
- Q All right. Now, did you make any search of tax returns of Nicholas L. Bianco to determine whether any such returns were filed for the year 1963?
- A Yes, sir, I did.
 - What did your search reveal?
 MR. LA ROSA: Objection.

THE COURT: No. I'll overrule it.

Ladies and gentlemen, I will give you in my

instructions a separate set of instructions for the years 1963, 1964 and 1965, and for what limited purposes you may use this evidence, what is about to be produced, for those years and I will give you a separate instruction for the year 1966 in the limited purposes for which you may use the return in that year. Essentially and briefly, based on the evidence as I know it now and you know it now, the year 1960, the proof with respect to the year 1966, the last group of years is being offered to prove knowledge, intent and willfullness and for that purpose alone, it is what we call a similar act type of proof. In a moment, I will read you the similar act.

The prior years as proof, as I understand it, is being offered by the Government to show you that the defendant did not have income in excess of \$600 or had he had income in excess of \$600, in any of such years, he would have been required to file a return and this is proof to negative the fact that he had income in excess of that amount.

Now, with respect to '66, it was brough out on cross-examination of Miss Peters this morning, the testimony with respect to expenditures that were

made by the defendant between October and December of 1966. Now, if you find in your deliberations that the source of the money for such expenditures constituted income as distinguished from inheritencies, gifts, prior accumulation loans, what have you, then, and if you find that such expenditures and if you find them to be income in excess of \$600, then assuming that the testimony is going to be -- I'll ask this witness.

Is there any record for any of these years, '63, '64, '65 or '66?

THE WITNESS: No, Your Honor. There's no record of returns filed.

THE COURT: All right. And assuming you find you believe this witness on that score, then, you may take the evidence with respect to 1966 for this limited purpose and this limited purpose only. The fact that an accused may have committed another offense at some prior time is not any evidence of proof whatever that at a later time; namely, the time in question in the information, the accused committed the offense charged in the information. Even both defenses are of a like nature, evidence to alledge earlier offense of a like nature may not therefore

be considered by the Jury in determining whether the accused did the act or acts charged in the information.

Nor may such evidence be considered for any other purposes whatever unless the Jury first finds that other evidence in a case standing alone establishes beyond a reasonable doubt that the accused did the act or acts charged in the information.

doubt from the other evidence in the case that the accused did the act charged in the information, then the Jury may consider evidence as to alleged earlier offense of a like nature in determining the state of mind, knowledge or intent or willfullness which the accused did the act charged in the information and where all the elements of an alleged earlier offense are of a like nature are established by evidence which is clear and conclusive. The Jury may, but is not obliged, to draw the inferences and find that in doing the act charged in the information the accused acted willfully, knowingly and with specific intent not because of mistake or accident or other innocent reasons.

Now, that portion of the Charge which I just read to you pertains only to the 1966 as the

evidence stands now, assuming you find it to be there was in 1966 evidence of a like nature.

All right, Mr. McCaffrey.

DIRECT EXAMINATION

(Continued):

- All right. Do you have certificates of assessments before you there with respect to the years 1963, 1964, 1965 and 1966?
- A Yes, sir, I do.
- Q And do those certificates report that, in effect, that no tax return was filed by Nicholas L. Bianco for those years?
- A Yes, sir.

MR. LA ROSA: May I have a standing objection to these lines of questions?

THE COURT: Yes.

THE WITNESS: Yes, sir, it does.

MR. MC CAFFREY: I request these certificates be marked for identification and I offer them in evidence.

THE COURT: Will you offer them separately please. 53 will be for the year 1963.

THE CLERK: Government's Exhibit 53.

MR. LA ROSA: I have no objection to the

foundation of the documents. My objection is to the record. I object to the loan.

THE COURT: On the basis of what we discussed.

MR. LA ROSA: I'm not objecting to the basis
of the documents. I'm objecting to their admissibility
with respect to relevance.

THE COURT: Let me see the documents. I assume that I previously discussed this question. I indicated my ruling.

MR. LA ROSA: Yes, sir.

MR. MC CAFFREY: These were marked 53a through d.

MR. LA ROSA: I just want the record to be clear. That's all.

THE COURT: Yes, I understand.

All right. Step up gentlemen.

(A side bar discussion is held out of the hearing of the Jury.)

THE COURT: There is no record here for no filing in '66 in Brooklyn that I see. Is that intentional?

MR. MC CAFFREY: No, Your Honor.

THE COURT: Better point it out to them. I've been giving instructions to '66. I want it qualified.

With respect to Exhibit 53a, Mr. Pellard, can you tell us what districts that refers to?

Providence, Rhode Island.

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Q Was there any search made with respect to the Brooklyn District for the year 1963?

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Yes, sir.

Q Where is the results of that search reflected?

A I believe it's one of the certificates that's there.

I believe that's exhibit 53d. It's a record for Brooklyn,

New York, covering the years '63, '64 and '65. It's a

one page certificate.

MR. MC CAFFREY: We request 53d be marked in evidence.

THE COURT: All right.

THE CLERK: So marked.

MR. MC CAFFREY: And request 53a be marked in evidence.

THE CLERK: So marked.

THE COURT: Government's 53d and 53c.

MR. MC CAFFREY: 53d-

THE COURT: b and c?

MR. MC CAFFREY: You want to see those, Your

Honor?

THE COURT: They haven 't been marked in evidence.

MR. MC CAFFREY: I realize that.

All right. I show you 53b for identification.

What district does that pertain to?

A Providence, Rhode Island.

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Q Is that for the year 1964?

A Yes, sir.

Q Is there anything that reflects the results of a search for the year 1964 with respect to the Brooklyn and Manhattan districts?

A Yes, sir.

THE COURT: That's 53d.

MR. MCCAFFREY: Request 53b be marked in evidence.

THE CLERK: So marked.

Q All right. What district does 53c reflect a search for?

A Provicence, Rhode Island.

Q And is that for the year 1965?

A Yes, sir.

Q What about Brooklyn, Manhattan Districts for 1965?

A That is also on 53d.

MR. MC CAFFREY: Request that 53c be marked in evidence.

THE CLERK: So marked.

THE COURT: Now, ladies and gentlemen, at the outset of the case I think one of the first witnesses we took, Exhibits 1, la, lb, lc, ld, 2, 2a

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and 2b and Exhibit 3, subject to connection, the Government has now provided the connection.

- Mr. Pellard, did you make any search for tax returns filed in the name of Francesca Coates for the year 1966?
- A Yes, sir, I did.
- Q With respect to what district did you make that search?
- A We searched Brooklyn, Manhattan, Rhode Island and Connecticut.
- As a result of that search did you find that any return had been filed by Francesca Coates for the year 1966?
- A Yes, sir. I did find a return.
- Q And what evidence did you find that such a return, having been filed --
- A I'm sorry. I don't understand.
- I say, what evidence did you find during the course of your search that a return had been filed by Francesca Coates for the year 1966?
- A I researched the microfilm record covering district 13, found the record of the return filed in District 12.
 - Q What is District 13, sir?
- A I'm sorry. Manhattan.

What information was reflected on that microfilm as to the Manhattan filing by Francesca Coates for the year 1966?

A It showed a form 1040a was filed on or before

April 15, 1967 in which there was a total tax due of \$410.00

even. It showed there were credits from withholding taxes

in the amount of \$466.60 and it also showed a refund was

paid in the amount of 56.60.

Q Did that microfilm show the social security number of Francesca Bianco whom that pertained to?

MR. LA ROSA: I'm going to object to the form of the question.

THE COURT: Did it show the social security number?

MR. LA ROSA: I think he said 1966. He used the name Francesca Bianco.

MR. MC CAFFREY: If I did, I meant to say Francesca Coates.

THE COURT: I missed it myself.

THE WITNESS: Yes, sir. There was a record of a social security number.

Q And do you have that social security number there, sir?

A Yes, sir.

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Q Will you tell us what it was, sir?

A 104343817.

Q Now, did you have a certificate pertaining to that filing?

A Yes, sir, I do.

MR. MC CAFFREY: Request this be marked for identification.

THE CLERK: Document marked for identification as Government's Exhibit 54.

THE COURT: Mr. McCaffrey, can I see Exhibit
47?

MR. MC CAFFREY: 47, Your Honor?

THE COURT: That's all right. Go ahead. Show that to Mr. McCaffrey, Mr. La Rosa, in the meanwhile.

Go ahead, Mr. McCaffrey.

MR. LA ROSA: I have no objection.

THE COURT: All right.

THE CLERK: Government's Exhibit 54 received in evidence.

THE COURT: Received in evidence.

Q Mr. Pellard, did you make a search for the year 1967 for any tax return filed in the name of Francesca Coates?

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Q And, with respect to what Districts did you make that search?

A Brooklyn, Manhattan, Providence, Rhode Island, Hartford, Connecticut.

Q Did you find any indication of whether or not a tax return had been filed as a result of your search?

A Yes, sir. We found a record of a return filed in the Manhattan District.

Q Was that the same social security number that you found with respect to the '66 return?

A Yes, sir.

A Yes, sir, I did.

And what other information did you find with respect to the '67 return?

A I found that the return was filed on or before

April 15, 1968; that there was a total tax of \$68.00.

There was credit from withholding in the amount of \$192.79

and there was a refund due in the amount of \$124.79. That

return was a form 1040a.

Q Will you tell us what a form 1040a is, sir?

A Yes, sir. That is what is commonly known as the short form. It's a form that a tax payer would use to file a return if they had income of, I believe, less than \$10,000 during that period of time and they wish to use the

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standard deductions. They did not have any income from any sources other than wages.

Q All right. Do you have a certificate with respect to the search for 1967?

A Yes, I do.

MR. MC CAFFREY: Request this be marked for identification and I offer it in evidence.

THE COURT: Is that '67 or '65?

MR. MC CAFFREY: With respect to '67, Your Honor.

THE COURT: I thought this was testimony you just gave with respect to '65?

THE WITNESS: No, Your Honor. '67.

THE COURT: All right.

THE CLERK: Government's Exhibit 55 so marked.

MR. LA ROSA: Could I have Exhibit 54?

THE COURT: I think it's right there. This testimony, Mr. Pellard, that you just gave with the tax of \$68.00 and a refund of \$129.00 referred to the year 1967?

THE WITNESS: Yes, sir. Yes, Your Honor.

THE COURT: I misunderstood. I thought I heard '65.

MR. MC CAFFREY: I don't think so, Your Honor.

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MR. LA ROSA: Can I ask the witness one question, please, with respect to this Exhibit?

THE COURT: Yes.

(Voir dire conducted by Mr. La Rosa.)

VOIR DIRE

BY MR. LA ROSA:

Q Is ISDLNOR an account number?

A That is a document locate number. It's a 13 digit number that we use to locate the original return. When the return is filed, we then put the return itself in a numeric sequence by this docket no.

Q Each year, your return will have a different account number or document locate number?

A Yes, sir. That's correct.

MR. LA ROSA: I have no objection to this exhibit.

THE CLERK: Government's Exhibit 55 received in evidence.

DIRECT EXAMINATION (Cont'd.)

BY MR. MC CAFFREY:

Q Did you make, research with respect to the year 1968, Mr. Pellard, to determine whether or not Francesca Coates or Francesca Bianco had filed a return for that year?

A Yes, sir, I did.

1		Pellard-direct 1	50
2		Q And what did you find as a result of that	
3	search	1?	
4	A	No record of a return filed.	
5		Q What districts were covered by that search?	
6	A	Brooklyn and Manhattan.	
7		MR. MC CAFFREY: I have no further questions	3.
8		MR. LA ROSA: I have no questions of this	
9		witness.	
10		THE COURT: All right, sir. You may step	
11		down.	
12	*6	(The witness is excused.)	
13		MR. MC CAFFREY: The Government calls Michael	1
14		Marchitello.	
15	MIC	HAEL MARCHITELLO, having	
16		been first duly sworn according to law, was examine	d
17		and testified as follows:	
18	DIRECT	EXAMINATION	
19	BY MR.	MC CAFFREY:	
20		Q By whom are you employed, Mr. Marchitello?	
21	A	The Internal Revenue Service.	
22		Q In what department are you employed by the	
23	Interna	al Revenue Service?	
24	A	I'm an Internal Revenue Agent.	
25		Q How long have you been so employed?	

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12 years.

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And prior to your employment as a Revenue
Agent by the Internal Revenue Service, had you had any
training or schooling in the field of accounting?

A I have a B.S. with a major in accounting and I have two years Public Accounting experience. I also have a CPA certificate.

Q Have you sat in the Courtroom, sir, during the course of this trial?

A Yes, I have.

Q Have you listened to the testimony of the various witnesses who testified to the expenses of the defendant, Nicholas Bianco, during the years 1967 and '68, '69, '70, '71?

A Yes, I have.

Ω Have you kept track of that testimony concerning the expenses of the defendant during those years?

A Yes, I have.

Now, as a result of listening to that testimony have you made a computation as to the total amount expended by the defendant, Nicholas Bianco, for the year 1967?

A Yes, I have.

Q And what was the amount that you computed that the defendant spent during the course of the year 1967?

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\$4,284.68.

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Q All right, sir. Will you tell us the items that entered into that total of \$4,284.68?

A There were the payments on the auto for the '67 Buick, \$1451.01, rent for the apartment and garage with the air conditioner for \$2028.00, Bureau of Labor Statists Cost of Living for cost of clothing, personal and personal care for a total of \$623.00, car insurance for \$182.67, comprising the amount of \$4,284.68.

Q All right. Did you make a computation as to the amount of tax that would have been due on that amount of gross income?

A Yes, I did.

Q Will you tell us how you made that computation? A Tax was based on single and tax tables were used because the standard deduction was more than the itemized deductions. It came to \$547.00.

Q All right, sir. Did you compute the total amount of the defendant's expenses based on the testimony that you heard in this courtroom for the year 1968? Yes, I did. A

Q And what did you compute the total amount of expenses were for that year?

A \$5,924.99.

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Q Would it be correct to determine that the gross income for that year --

A It would be correct.

Q Would you tell us, please, the items that went into that total of \$5,924.99?

Payments on the auto for the '67 Buick, \$604.65,

payment on the '69 Buick, \$240.00, repairs on auto collision,

\$50.00, downpayment on '69 Buick, \$60.00, electric for

apartment, \$126.79, payment per month, Methodist Hospital,

\$435.65, rent which includes apartment and garage, \$2,680.00,

Dr. Nathan, physician, \$44.00 and Bureau of Labor Statistcs

estimated figures for food, clothing and personal care,

married part of the year with one child, \$2735.00, Dr.

Mays, obstetrician, \$195.00, Dr. Schwartz, insurance,

\$254.00, giving a total of \$5,924.99.

THE COURT: Now, one thing, hospital again.

THE WITNESS: Methodist Hospital, \$435.65.

THE COURT: Go ahead.

O Have you made a computation as to the amount of tax that would have been due on that sum if that had been reported on tax return?

A Yes, I did.

Q And can you tell us how you arrived at the computation, what the amount of tax was?

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I gave effect to the medical expenses, reduced it by the gross income by statutory limitations by 3%. I also allowed the interest expenses paid on the Buicks, 2 Buicks, gave effect to 3 exemptions at \$600 each which gave a taxable income of \$3,459.44. Tax on that, which is \$528.10 and given effect to the tax sur charge of \$36.00 made a total of \$564.10.

Q Sir, how did you treat the payment of \$1,750 that testimony indicated was paid to the defendant by Great Eastern Insurance Company?

A Well, since \$1800 was paid for the auto repairs and \$1750.00 was reimbursement, the net effect was \$50 and the \$50 was included in expenditures, sort of like a wash.

Q With respect to the year 1969, Mr. Marchitello, did you compute the total amount of the defendant's tax based upon the testimony that you heard in this court?

A Yes, I did.

Q Computed, what was the total amount of expenditures?

A \$9,898.25.

THE COURT: \$9,800 --

THE WITNESS: \$.25.

Q Did you make any adjustment to this figure,

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A Yes. I reduced this by \$3,000 which is the amount received from Great Eastern for the stolen car. That's given a gross income of \$6,898.25.

Now, if a return had been filed in this amount, had been reported as income, what would have been the tax due on that \$6,898.25?

A \$757.60.

\$9,898.257

Q Will you tell us, sir, how you computed that amount of tax that would have been due?

I allowed the higher of the standard deduction or itemized deduction, in this case standard deduction exceeded the itemized deduction; three exceptions, \$600, that's \$1800. The taxable income was \$4,408.42 which gave a tax of \$698.60; tax, surcharge of \$70.00 making a total of \$767.60.

Q Did you make an alternate computation as to what the result of itemizing would have been?

Q Tax would have been higher if he were to have itemized?

A It was less than the standard deduction.

Well, it would have been much more.

Q With respect to the year 1970, Mr. Marchitello, based on the testimony that you heard during the trial, did

you compute the total amount of defendant's expenditures for the year 1970?

A Yes, I did.

Q What, if anything, did you arrive at as a result?

A \$8,916.49.

A Yes, I did.

Q Will you tell us, price the items that went into that figure of \$8,916.490

A Payments on the '69 Buick, \$1440, electrice for the apartment, \$230.10, the Methodist Hospital, \$426.40, New York Telephone, \$41.79, rent on the apartment and the garage, \$3,030, Dr. Nathan, \$130, estimated figures for the Bureau of Labor Statistics for the cost of living, for food and clothing, \$2,612, Dr. Nees, \$10, Robert Weiswasser, an attorney, \$400, Arthur Schwartz, auto insurance, \$469, and Americana Hotel, \$127.27; thus making \$8,916.49.

Q All right, sir. Did you compute the amount of tax that would have been payable on that if this figure of \$8,916.49 had been reported on a tax return?

Q Will you tell us the amount of tax that would have been due and how you made that computation?

A I allowed the standard deduction and exemptions, 4 people, at \$625 each. That year it went up. Given a

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taxable income of \$5,524.84, tax of \$909.72 and a surcharge of 0.25, \$22.74, making a total of \$932.42.

Q Did you make an alternate computation using the itemized --

A Nothing. The itemized deductions were less than the standard deduction.

So your computation showed that; is that correct?

A Two show that the itemized were less, standard was given.

O If you had itemized deductions, the amount of tax would have been greater?

A Right.

With respect to the year 1971, Mr. Marchitello, did you compute the total amount of the defendant's expenditures for that year based on the testimony that you heard in Court?

A Yes, I did.

Q All right. Will you tell us, please, what the total amount of expenditures that you computed for that year was?

A Payments on the auto, '69 Buick.

Ω Total amount?

A \$10,217.01.

Q Will you tell us, now, what the items were that went into that total?

A Payments on auto, '69 Buick, \$840; electric for apartment, \$103.72; New York Telephone, \$174.07; Montessori Academy, \$1,118; rent on the apartment in the Grand, \$3,186; All State Insurance Company, \$401; Dr. Nathan, \$91; estimated figures for cost of living for food and personal care and clothing, \$2,751; a lighting fixture, \$225; Dr. Nees, \$30; New England Telephone Company, \$30.22; Robert Weiswasser, attorney, \$800; Arthur Schwartz, auto insurance, \$249; and insurance on household contents, \$133; thus making \$10,272.01.

- All right. Did you compute the amount of tax that was payable on this amount if that sum had been reported as gross income and tax return filed?

 A Yes, I did.
- O And, can you tell us, please, what the amount of the tax was that you computed and, how you arrived at the amount?
- A Tax due would be \$1,035.37 to give effect to the 13% standard deduction and 4 exemptions of \$2700.
- Q Did you make an alternate computation as to what the results would have been if deductions had been itemized?

A No. I didn't because itemized deductions were far less than the standard deductions.

MR. MC CAFFREY: I have no further questions.

CROSS-EXAMINATION

BY MR. LA ROSA:

- Mr. Marchitello, you sat here and listened to all the testimony throughout the trial, have you not?
- Q Mr. Marchitello, is interest on Municipal Bonds taxable?
- A No, that is not.
 - Q Is it to be reported in gross receipts as far as taxable income is concerned?
- A No, sir, it is not.
 - Q Are the receipts of loans from other people taxable income?
- A It is not. 18
 - Must they be included in gross receipts?
- A It is not. 20

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- Q Are the receipts of inheritances taxable income, sir?
- A It is not. 23
 - No matter how large the inheritance is?
 - That's right. A

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Marchitello-direct 160
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           Q You heard that in 1967 Mr. Bianco's Mother
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     died. Is that correct?
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     A
           That's right.
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           Q Have you added up all of the gross income .
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     for the years '67, '68, '69, '70 and '71?
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           No. I didn't do that, no.
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     A
           Q Are the figures 4284.68 --
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     A
           Right.
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           2 5924.99?
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           Right?
     A
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           0 6898.25?
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     A
           Right.
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           9 8916.49?
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     A
           Right.
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           0 $10,217.01?
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    A
           Right?
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           Q Does that add up to$36,241.42, if I may,
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    I wrote them down. Would you like to see them?
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           Yeah. It appears right.
    A
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           Q Might help if they're all in front of you?
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           That's right.
    Λ
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           Q is that correct?
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    A
           Correct.
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Q So the total of all these years, as far as the

adjusted gross income that you reported to us is \$36,241.42.

else.

asked.

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THE COURT: Mr. Marchitello, would you, so
the record is complete, would you give us a breakdown
on the 1969 expenses which I don't think you were

MR. LA ROSA: Thank you. I have nothing

THE WITNESS: Payments on '69 Buick, \$1320; electric bill, \$209.01; telephone, \$285.24; rent for the apartment and garage, \$3030; Dr. Nathan, \$121; cost of living for food and personal care, estimated expenses; \$2035; Dr. Nees, \$280; payments on the furniture; \$1620; Robert Weiswasser, \$600; Arthur Schwartz, \$398; giving a total of \$9898.25 reduced by Great Eastern Check of \$3000 giving a gross income of \$6898.25.

THE COURT: I didn't get the furniture or Schwartz.

THE WITNESS: Furniture was \$1620; Mr. Schwartz was \$398.

THE COURT: Ohay. Thank you. You're excused.

(The witness is excused.)

THE COURT: All right. Ladies and gentlemen, we'll take a 5 minute afternoon recess at this time.

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(The jury entered the jury box at 11:20 a.m.)

THE COURT: Now, ladies and gentlemen,
it's my practice to read the charge on the law to
you. It's a little harder to follow than if I give
it to you extemporaneously, but it minimizes error
if I do read it. So, I beg your indulgence to
stay with me and follow the charge. It requires
a little bit more concentration on your part.

Now that you have heard the evidence and the arguments, it becomes my duty to give the instructions of the Court as to the law applicable to the case. It is your duty as jurors to follow the law as stated in the instructions of the Court and to apply the law to the facts as you were given them -- to the evidence in the case. You are not to single out one instruction alone as stating the law, but you must consider the instructions as a whole. Neither are you to be concerned with the wisdom of any rule of law stated by the Court, regardless of any opinion you may have as to what the law ought to be. It would be a violation of your sworn duty to base the verdict upon any other view of the law than that given in the instructions of the Court, just as it would be a violation of your sworn duty as judges of the facts to base a

verdict upon anything but the evidence in the case.

You must not permit yourselves to be governed by sympathy, bias, prejudice, or any other consideration not founded on evidence and these instructions on the law. Justice through trial by jury must always depend upon the willingness of each individual jury to seek the truth as to the facts from the same evidence presented to all of the jurors. Arrive at a verdict by the same rule of law as given in the instructions of the Court.

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of the information and the denial made by the not-quilty plea of the accused. You are to perform this duty without bias or prejudice as to any party. Again the law does not permit jurors to be governed by sympathy, prejudice, or public opinion. Both the accused and the public expect that you will carefully, impartially consider all the evidence in the case, following the law as given by the Court, and reach a just verdict regardless of the consequences.

I am not going to send the exhibits which have been received in evidence with you as you retire for your deliberations. You are entitled,

however, to see any or all of the exhibits as you consider your verdict. I suggest that you begin your deliberations and then, if it would be helpful to you, you may ask for any or all of the exhibits simply by sending a note to me through one of the deputy marshals.

An information is but a form or a method of accusing a defendant of a crime. It is not evidence of any kind against the accused. There are two types of evidence from which a jury may properly find a defendant guilty of a crime. One is direct evidence, such as the testimony of an eyewitness. The other is circumstantial evidence, proof of facts and circumstances which rationally imply the existence or nonexistence of other facts, because other facts, such as other factually follow according to the common experience of mankind.

By way of example—a very simple example—the footprint of a man in the sand implied to
Robinson Crusoe there was another man with him on
the desert island. Indeed there was, the man
Friday. Thus on the one hand you may have direct
evidence of the issue; on the other hand you may
have circumstantial evidence of the issue. The
law does not hold that one type of evidence is

necessarily of better quality than the other.

The law requires only that the Government prove
its case beyond a reasonable doubt both on the
direct and circumstantial evidence.

At times you the jury might feel that the circumstantial evidence is of better quality, and at other times you may feel that the direct evidence is of better quality. That judgment is left entirely up to you. As a general rule the law makes no distinction between direct and circumstantial evidence, but simply requires before convicting a defendant that the jury be satisfied of the defendant's guilt beyond a reasonable doubt from all of the evidence in the case.

The law presumes the defendant to be innocent of the crime. Thus the defendant, although accused, begins the trial with a clean slate, with no evidence against him, and the law permits nothing but legal evidence, presented before the jury, to be considered in support of a charge against the accused. So the presumption of innocence alone is sufficient to acquit a defendant unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt after a careful and impartial consideration of all the evidence in the case.

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The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant, and the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

A reasonable doubt does not mean a doubt arbitrarily and capriciously asserted by a juror because of his or her reluctance to perform an unpleasant task. It doesn't mean a doubt arising from the natural sympathy which we all have for others. It is not necessary for the Government to prove the guilt of the defendant beyond all possible doubt, because if that were the rule very few people would ever be convicted. It is practically impossible for a person to be absolutely sure and convinced of any controverted fact which by its nature is not susceptible of mathematical certainty. In consequence, the law says that a doubt should be a reasonable doubt, not a possible doubt. A reasonable doubt is a doubt based upon reason and common sense, the kind of doubt that would make a reasonable person hesitate to ac Proof beyond a reasonable doubt must therefore be proof of such a convincing character that you would

be willing to rely and act upon it unhesitatingly in the most important of your own affairs. The jury will remember that a defendant is never to be convicted on mere suspicion or conjecture.

Again, a reasonable doubt means a doubt sufficient to cause a prudent person to hesitate to act in the most important affairs of his or her life.

The statute alleged to have been violated in each of the counts of the indictment in this case is 7203 of Title 26, United States Code, which provides in pertinent part as follows:

"Any person required" by law or regulation
"to make a return, who willfully fails to make
such return at the time required by law or regulations" shall be guilty of an offense against
the United States.

Count 1 of the information, which charges a violation of said section of the statute, reads as follows: "That during the calendar year 1967 the defendant, Nicholas L. Bianco, who was a resident of the City of New York, State of New York, had and received a gross income of \$3,365.80; that by reason of such income he was required by law, following the close of the calendar year 1967

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and on or before April 15, 1968 to make an income tax return to the District Director of Internal Revenue for the Internal Revenue District of Brooklyn, at Brooklyn, New York, in the Eastern District of New York, or to the Director, Internal Revenue Service Center, North-Atlantic Region, Andover, Massachusetts, stating specifically the items of his gross income and any deductions and credits to which he was entitled; that well knowing all of the foregoing facts, he did willfully and knowingly fail to make said income tax return to the said District Director of Internal Revenue, to the said Director of the Internal Revenue Service Center, or to any other proper officer of the United States."

The other counts of the information are identical except for the dates and acts which are as follows: Count 2 pertains to the calendar year 1968. It alleges the receipt of a gross income of \$8,042.18, the tax return on or before April 15, 1969.

In Count 3 the tax there pertains to the calendar year 1969, alleges receipt of a gross income of \$6,701.91, and says return due on or before April 15, 1970.

Count 4 pertains to the calendar year

1970. It alleges receipt of a gross income of \$9,164.97, and says return due on or before April 15, 1971.

Count 5 pertains to the year 1971 and alleges receipt of a gross income of \$11,515.87, and the return was due on or before April 15, 1972.

The dollar amounts stated in each of those counts are not significant except that they represent a substantial amount of income above the minimum requirement of \$600. Six hundred for the first three represents 2300, 2300 for the last two years are the important things to consider.

You must keep in mind that you must consider each of the counts separately. The law on this is that failure to comply with a requirement of the Internal Revenue Code for one year is a separate offense from such failure to comply for different years.

The defendant's filing obligation in any one year must be determined separately from his filing obligation in any other year. In other words, you must consider each count separately.

Three essential elements must be proved beyond a reasonable doubt in order to establish the offense charged in each count of the information.

These essential elements are as follows: (1) that the defendant was a person required by law or regulation to make a return of his income for the taxable years specified in each of the counts in the information: (2) that the defendant failed to make such a return at the time required by law, which is on or before April 15th of each of the filing years as specified in each count of the information, and (3) that the defendant's failure to make a return was willful.

Individual income tax returns must be made to the Internal Revenue Service, or to the Internal Revenue Center servicing the Internal Revenue Service in which he is located or the place of business of the person making the return is located, in this case, the Service Center at Andover, Massachusetts, or with the District Director of said district, by filing the returns at the office of the District Director.

With respect to the first three counts in the information, those pertaining to the taxable years of 1967, 1968 and 1969, the defendant was required to make a federal income tax return for any such year in which he had gross income in excess of \$600.

As to the last two counts, pertaining to 1970 and 1971, he was required to make a return for any such year in which he had gross income in excess of \$2300. Gross income is defined as income received in money or the equivalent less the cost of earning it. Gross income does not include gifts, loans or inheritances.

Taking into account the fact that the defendant was married from 68 on, the defendant is a person required to file a return on his gross income for, as to the first three calendar years, exceeding \$600, and for the last two calendar years, exceeding \$2300, although he may be entitled to deductions from that income in sufficient amount so that no tax is due.

The Government is not required to show
that a tax is due and owing as an essential
element of the offense charged in the information,
nor is the intent to evade payment of the taxes
an essential element of the offense charged.

The specific element of willfulness is an essential element of the crime of failure to file an income tax return. The word "willfully" used in this connection with this offense means deliberately and intentionally and without

of deliberately intending not to file a return which the defendant knew he should have filed, in order to prevent the Government from knowing the extent of or facts material to the determination of his tax liability. The defendant's conduct is not willful if he acted through negligence, inadvertence or mistake or due to his good faith misunderstanding of the requirements of the law.

amount of the defendant's income for each year in which he is charged with failure. It may not be able to determine the total amount of the defendant's income. The Government need only show that the defendant had gross income in the amount equal to or larger than the minimum amount which required filing of returns in each of the years charged, that is, \$600 for 1967, '68, '69, and \$2300 for 1970, 1971.

In this case the Government relies on the so-called "expenditures" method of proving that the defendant's gross income was sufficient in each of the years in question to require him to file a tax return. Of course, proof under this theory is circumstantial in nature, but there is

no reason why such expenditures may not be considered in determining income where there is no evidence they represent anything other than income. In other words, such evidence, without any evidence showing otherwise, will support an inference that the expenditures are gross income. Where there has been no evidence of loans or gifts to the defendant or inheritances to him, you may, but of course need not, draw an inference that the expenditures represent income to the defendant which requires him to file a tax return in one or more of the years specified in the information.

You will note that I have said that an inference may be drawn. I don't mean to suggest that you should draw an inference or that you should not draw an inference. It is for you alone to draw such inferences as you think the evidence rationally supports.

With respect to the defendant's contention that the moneys for the expenditures could have come from nontaxable gifts, loans and/or inheritances or from prior accumulated funds, the burden is on the Government to check any lead or information with respect to any such nontaxable moneys furnished to it by the defendant prior to the

as to the defendant's income and assets by interviewing friends and relatives and checking with financial institutions and both present and former residences of the defendant. The Government cannot be expected to conduct an exhaustive, nation-wide investigation when the defendant has supplied no relevant leads as to where he got the money he spent.

or precise source of the moneys the Government need only show a likely source of income. In this connection, the Government in this case points to the various statements or admissions of the defendant that he was receiving income in various amounts from the Easy Floor Waxing Company and from the loan at interest made to Mr. Rabinovich.

The Government has also produced evidence that the defendant did not file any tax returns for the years 1963 through 1966 and claims that the failure to come to the admissions of the defendant that he did not have an income in excess of \$600 in any of such years, for if he had income in excess of such amount for any such year he would have been required to file a return for

such year. Thus it is a question of fact for you to determine whether the moneys used by the defendant to make the expenditures in the years in question constituted gross income to him during such years or whether they constituted moneys from nontaxable sources as contended by the defendant herein.

Bear in mind that the burden is always on the Government to prove beyond a reasonable doubt that the moneys for which the expenditures were made constituted income to the defendant in the years in question. The defendant need not prove that the expenditures were made from prior accumulations or a source other than taxable income. There is no burden on the defendant to prove anything, and, of course, this means that he need not prove to you that the expenditures were made from prior accumulations or prior sources other than taxable income for the years specified in the information.

An act is done voluntarily and knowingly if not because of mistake or accident or other innocent reason. The purpose of adding the word "knowingly" in the indictment and statute was to insure that no one would be convicted for an act because of

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mistake or accident or other innocent reasons.

Knowledge and intent ordinarily may not be proved directly, because there is no way of fathoming or viewing the human mind, but you may infer a defendant's knowledge and intent from the surrounding circumstances. You may consider any statements made and done or omitted by a defendant, and all the facts and circumstances in evidence which indicate his state of mind.

It is orginarily reasonable to infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

With respect to the calendar year 1966, you will recall that on the cross-examination of Miss Peters she testified to various expenditures made by the defendant during the months of October, November and December of that year. If you find that such expenditures have exceeded \$600, and if you further find that the source of such expenditures was taxable income as distinguished from inheritances, gifts, loans or prior accumulated funds, then the Government says that they have shown an earlier offense of like nature and that you should consider it on the question

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of the defendant's knowledge, willfulness, state of mind or intent.

As I stated to you yesterday, the restriction on such proof for such purpose is as follows: the fact that the accused may have committed an offense at some earlier time is not any evidence or proof whatever that at a later time the accused committed the offense charged in the information, even though both offenses are of like nature. Evidence as to an alleged earlier offense of a like nature may not therefore be considered by the jury in determining whether the accused did the act charged in the information. Normally such evidence cannot , be considered for any other purpose whatever unless the jury first finds that other evidence in the case standing alone establishes beyond a reasonable doubt that the accused did the act or acts charged in the information, leaving aside only a question whether he did it knowingly, intentionally and willfully.

If the jury should find beyond a reasonable doubt from the other evidence in the case that the accused did the act or acts charged in the information, then the jury may consider it as evidence as to an alleged earlier offense of a like nature

in determining the state of mind, knowledge, intent or willfulness with which the accused did the act charged in the information; therefore if all the elements of alleged earlier offenses of a like nature are established by evidence which is clear and conclusive, the jury may, but it is not obliged, to draw the inference and find that in doing the act or acts charged in the information the accused acted willfully, knowingly and with specific intent and not because of mistake or accident or other innocent reason.

As I also indicated to you yesterday, the fact, if you find the same to be a fact, that the defendant filed no income tax returns for the years 1963, 1964, and 1965 may be considered by you in determining whether the defendant had any funds accumulated prior to 1966 or 1967 with which to make the expenditures in 1967 through 1971 as well as in 1966. The Government asks you to bear in mind that in each of those years, 1963, 1964 and 1965, if the defendant had gross income in excess of \$600 he was required by law to have filed an income tax return and the Government says that it has no record of such filing by the defendant.

The fact that the defendant filed an income

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tax return for the year 1962 on which he obtained a refund may be considered by you as evidence of the fact that the defendant was aware of the filing requirements.

not evidence in the case unless made as an admission or stipulation of fact between the attorneys on both sides who may stipulate or agree as to the existence of a fact. You must, unless otherwise instructed, regard that fact as true.

Unless you are otherwise instructed, the evidence in the case always consists of the sworn testimony of witnesses regardless of who may have called them, and all exhibits received in evidence regardless of who may have produced them, and all facts which may have been admitted or stipulated, and all applicable presumptions stated in these instructions.

Any evidence as to which an objection has been sustained by the Court or any evidence ordered stricken by the Court must be entirely disregarded. Evidence does include, however, what is brought out from witnesses on crossexamination as well as what is testified to on direct examination. Unless you are otherwise

instructed, anything you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded.

You are to consider only the evidence in the case, and your verdict is to be based on the evidence only. In your consideration of the evidence you are not limited to the bald statements of the witnesses. In other words, you are not limited solely to what you see and hear as the witnesses testify; you are permitted to draw from the facts which you find have been proved such reasonable inferences as you feel are justified in the light of your experiences.

Inferences are deductions or conclusions which reason and common sense lead the jury to draw from the facts which have been established by the evidence in the case.

As I have told you several times, I will repeat to you again: the lawyers' statements are not evidence. If a lawyer asks a witness a question which contains an assertion of fact or an assumption of fact, you may not consider the assertion or assumption as evidence of this fact. The lawyers' statements, again, are not evidence, and you as jurors are the sole judges of the

credibility of the witnesses and the weight their testimony deserves. You should carefully scrutinize all testimony given, the circumstances under which the witness testified, and every matter in evidence which tends to show whether a witness is worthy of belief.

Consider each witness's intelligence, mode of testifying, and state of mind and demeanor and manner while on the stand. Consider the witness's ability to observe the matter as to which he has testified and whether he or she impresses you as having an accurate recollection of these matters, also any relation any witness may have to either side of the case, the manner in which each witness might be affected by the verdict, and the extent to which, if at all, each witness is supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness or between the testimony of different witnesses may or may not cause the jury to discredit such testimony. Two or more witnesses, two or more persons witnessing an incident or a transaction may see or hear it differently and an innocent misrecollection, like failure of recollection, is not an uncommon experience.

In weighing the effect of a discrepancy always consider whether it pertains to more important or unimportant details, innocent error or intentional falsehood. After making your own judgment you will take the testimony of each witness and give it such weight as you think it deserves.

The testimony of a witness may be discredited or disproved by showing that he or she previously made statements which are inconsistent with his or her present testimony. The earlier contradictory statements do not establish the truth of those statements. It is the province of the jury to determine the weight of the credibility to be given to testimony of a witness who has been impeached, if they find any witness has been impached.

If a witness is shown to have knowingly testified falsely concerning any material matter, you have a right to distrust such witness's testimony in other matters. You may reject all the testimony of that witness or give it such credibility as you may think it deserves.

The law does not compel a defendant in a criminal case to take the witness stand and testify.

No presumption of guilt may be raised and no

inference of any kind may be drawn from the failure of a defendant to testify. As stated before, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

on either side to object when the other side offers testimony or other evidence which the attorney believes is not properly admissible. You should not show prejudice against an attorney or his client because the attorney made objections. Upon allowing testimony or other evidence to be introduced over the objections of an attorney, the Court does not, unless it is expressly stated, indicate any opinion as to the weight or effect of such evidence.

As stated before, the jurors are the sole judges of the credibility of all witnesses and the weight and effect of all evidence.

when the Court has sustained an objection to a question addressed to a witness, the jury must disregard the question entirely and may draw no inference from the wording of it or speculate as to what the witness would have said if he or she had been permitted to answer the question.

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The fact the Court has asked one or more questions of a witness for clarification or mishelieved evidence purpose, is not to be taken by you in any way as indicating this Court has any opinion as to the guilt or innocence of the defendant in this case, and you are to draw no inference therefrom. That determination is up to you and you alone based on all the facts in this case and the applicable law in the above instructions.

You are here to determine the guilt or innocence of the accused from the evidence in the case. You are not qualified to return a verdict as to the guilt or innocence of any other person or persons. So if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the accused, you should so find even though you may believe one or more other persons are guilty.

If any reasonable doubt remains in your mind after impartial consideration of all the evidence in the case, it is your duty to find the accused not guilty. The verdict most represent the considered judgment of each juror. In order to return a verdict, it is necessary that

each juror agree thereto, and your verdict must be unanimous.

It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement if you can do so without violence to individual judgment. Each of you must decide the case for himself or herself. But do so only after an impartial consideration of the evidence in the case with your fellow jurors.

In the course of your deliberations do not hesitate to reexamine your own views and change your opinion if convinced it is erroneous, but do not surrender your honest conviction as to the weight or effect of evidence only because of the opinion of your fellow jurors or for the mere purpose of returning your verdict.

If any reference by the Court or by counsel to the evidence does not coincide with your own recollection, it is your recollection which contols during your deliberations. The punishment provided by law for the offenses charged in the information is a matter exclusively within the province of the Court. It is not to be considered by the jury in any way in arriving at an impartial verdict as to guilt or innocence of the accused.

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Upon retiring to the jury room, the lady in the green suit will be the No. 1 juror and will serve as your foreman unless she chooses not to do so. She will preside over your deliberations and will be your spokesman here in court. If for some reason she elects not to serve as your forelady, then you will elect a foreperson from among your membership.

Remember at all times you are not partisans, you are judges, judges of the facts. Your sole interest is to seek the truth from the evidence in the case. There is nothing peculiarly difficult in the way a jury should consider the evidence in a criminal case from that which all reasonable persons consider any questions. You are expected to use your good common sense and consider the evidence in the case but only those opinions for which it has been admitted and give it a reasonable and fair construction in light of your common knowledge of the natural tendencies and inclinations of human beings.

If the accused be proved guilty beyond a reasonable doubt, say so; if not so proved guilty, say so.

You must render a verdict with respect to

 each of the five counts in the information that

I have described to you. If it becomes necessary,

you must render a verdict separately with respect

to each count.

tions to communicate with the Court, you may send a note by a deputy marshal signed by your forelady or by one or more members of the jury. No member of the jury should ever attempt to communicate with the Court by any means other than a signed writing, and the Court will never communicate with any member of the jury on any subject touching the merits of the case otherwise than in writing or orally here in open court.

You will note from the oath about to be taken by the deputy marshals shortly that they, too, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury touching the subject matter of the case.

Bear in mind also that you are never to reveal to any person, not even to the Court, how the jury stands in number, directly or otherwise, on the question of the guilt or innocence of the accused after you have reached a unanimous verdict.

When you have reached such a verdict one

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way or the other, you will send a note to the Court saying you have reached a verdict, and then you will announce your verdict here in open court.

Now I am going to send you out for just a moment or two while I discuss the charge on the law with the attorneys. Then I'll bring you back and the deputy marshals will be sworn and the alternates will be discharged. Then you'll begin your deliberations but until that time, until you're recalled and sent in to deliberate, don't discuss the case.

(At 11:55 a.m. the jury was excused)
THE COURT: Mr. McCaffrey?

MR. MC CAFFREY: The Government has no objection to the charge, your Honor.

MR. LA ROSSA: May it please the Court, the defendant most respectfully takes the following exceptions to the Court's charge: (1) except to that portion of the charge wherein the Court stated an inference may be drawn that the expenditures were of income where there has been no proof of taxable income.

THE COURT: I don't think it was stated that way.

MR. MC CAFFREY: I don't.

THE COURT: Is there any reason why we shouldn't proceed with the sentencing proceedings?

MR. LA ROSSA: Except for certain things in the probation report that I'd like to bring to your Honor's attention.

THE COURT: That's not my question. My question is, Is there any reason why we shouldn't proceed with the sentence proceedings?

MR. LA ROSSA: No, sir, there is none.

THE COURT: Is there any reason?

THE DEFENDANT: What?

THE COURT: Is there any reason we shouldn't proceed with the sentence proceeding?

THE DEFENDANT: No, your Honor.

THE COURT: All right, go ahead, Mr. LaRossa.

MR. LA ROSSA: Your Honor, I know your Honor read the probation report, as I did this morning.

THE COURT: I didn't read it this morning.

I read it.

MR. LA ROSSA: Well, I'm sure you read it at least once, or more than once. There are a number of opinions of federal agents within the probation report. I respectfully submit that opinions are not facts. There is no substantiation, and this is given to your Honor for the purpose of sentencing

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Mr. Bianco, and I don't think that's what the law is at the present time.

I think your Honor has the right to have every fact before him, but opinions certainly should not be before you, or guesses or--

THE COURT: I think I can distinguish between opinions and fact, Mr. LaRossa. I mean, the Court is not completely oblivious to what goes on.

Fortunately or unfortunately, people do things,
I'll tell you, for example, if I can amplify it, but
one of my friends who lives up in Providence, Rhode
Island, sent me clippings of the two Providence papers
that carried the story about the conviction, so these
things—I shall distinguish between facts and
opinions, if that's what's worrying you.

MR. LA ROSSA: I don't know what your Honor-You mean the newspaper was so far removed?

THE COURT: So far removed. I mean they had a lot of details in there unrelated to this particular trial.

MR. LA ROSSA: It had nothing to do with this trial?

THE COURT: I understand.

MR. LA ROSSA: The only thing I'm concerned about, your Honor, frankly, when we talk about

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somebody moving to Providence and in the opinion of the agents he is moving there for a specific reason not documented by fact, I am concerned.

THE COURT: I understand.

MR. LA ROSSA: And if your Honor tells me that you are distinguishing between those things and factual patterns, I'm ready to proceed and not nitpick with respect to each of these items.

THE COURT: No, you may nit-pick all you want, but I think I have a pretty good idea of the information to which you make reference.

MR. LA ROSSA: Most of it is on page 5, your Honor, if it helps.

THE COURT: Well, there is information even to some extent in the page on the record sheet, if we can call it that --

MR. LA ROSSA: Yes.

THE COURT: --which -- of course, I've read

it. I can't say it isn't in my mind, all of this

material, but I haven't taken that into consideration
in determining what should be done here.

MR. LA ROSSA: Again, sir, then I'm ready to proceed. May I?

May it please the Court, I think your Honor knows the record as well as anyone could with respect

to the factual pattern, and certainly the probation report, I'm sure, isn't as specific as the testimony that your Honor heard, and I'm certainly not in any position to quarrel with the jury's verdict, nor do I think you can.

But one thing I'm sure your Honor recalls, and one thing I'd like to bring to your attention is that nowhere within the testimony was there any attempt by Mr. Bianco to use a fictitious name, to purchase under a fictitious name, or any acts which I suggest are evasive or are the subject of evasion of income tax as opposed to a failure to file tax.

THE COURT: Well, it all depends on how you define evasion.

MR. LA ROSSA: What I'm referring to, your

THE COURT: You're talking about false books and so forth? There were no books at all.

MR. LA ROSSA: I'm referring to the historic use of fictitious names to buy cars, fictitious names to supply charge accounts. None of that occurred in this case, your Honor. Mr. Bianco paid everything in his own name. The receipts were either given to him or his wife, and I think your Honor saw the Montessori School, and every creditor that came in or everyone

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that he dealt with over those years came in, and Mr. Bianco's name was on each of those bills, or his wife's, and the signature as well, if in fact it was an instance where a signature was required.

Since he has retained our law firm he has filed taxes. He received some bad advice a number of years ago, the advice being that because he hadn't filed in past years he couldn't start filing. Had he received the proper advice five or six years ago-because there is no intention on his part to avoid paying taxes. Last year's tax returns were filed. This year's tax returns will be filed. Not only were they filed, but they were paid last year in Providence.

Mr. Bianco, your Honor knows, will pay this money, or have to pay it, in addition to penalties and interest and everything else.

With respect to his record and the multitude of arrests for consorting, for dice, I hope your Honor realizes that that type of section in the 1950's was used by the New York City police for gambling charges. The consorting with known criminals was another form of charging someone who was present at a premises where the gambling too place.

The man's background is that of a gambler.

He is a gambler. He testified before the grand jury
he is a gambler. And frankly, no one's ever charged
him with anything else, excluding the assault back
in, I forget what year—that was 1960 or 1959.

THE COURT: There was an assault in '53 in the Army, and an assault in '59, and there was a conspiracy to assault in '63.

MR. LA ROSSA: I think there are only two convictions, your Honor, one in Brooklyn--

THE COURT: One was a nolo.

MR. LA ROSSA: Yes, sir. One I think was the breaking of a window, according to the probation report, and I think it also stated that someone was struck as a result of it. And there was a three-month probation placed upon him.

The other fact that I would like to bring to your Honor's attention is that I am sure you are aware of the disparate sentence review that's going on right now. I know your Honor is aware that model sentences have been sent out to a great majority of the judges throughout the district. I don't know what a specific judge has decided about a specific case, because I'm not privy to that information, but we do know that once the

judicial convention, the judicial center, takes
them and codifies them we'll find out what the ranges
have been from the lowest to the highest.

We also know from experience what's been done with failure to file cases in this court. Even with people who are alleged to be in the same posture that Mr. Bianco is. Two sentences that I have had within the Eastern District of New York have both resulted in three or four month sentences on failure to file.

In the disparate sentence review that just took place the great majority of judges that responded to the failure to file section responded that their range of sentences, the great majority, were in the suspended sentence class, and the maximums six or seven months. I don't think that ties your Honor's hands, and I'm not suggesting that it does, but I think that's what the purpose of this is: the purpose is to keep sentences within a bench mark type of situation so that one judge doesn't give an switch lot more time than another one does for the same crime and under the same circumstances.

A lot of allegations in the presentence report in effect charge Mr. Bianco, but in none of these situations has he ever been tried or convicted for

the allegations -- and I am talking about the type of allegations that I referred to before as suspicions. I think your Honor is aware of that. I think your Honor should sentence Mr. Bianco for the crime that was charged, not for the opinions of other people, not for the opinions of agents.

The fact that he moved to Providence, he moved to Providence because he has two small children, and since he moved to Providence I think your Honor will see that that matter of constant arrest that was occurring in New York has almost ceased, during those years. When an agent puts down the opinion on why they moved — and again I'm referring to that aspect of the presentence report — there is another factor behind this, and that's the fact that the man's got a good marriage and two good children, and his wife has begun to get involved in business in that area. She's going to school; she's attempting to become a real estate broker. She's presently working as a real estate agent for another broker.

They have attempted to create a new life for themselves. They have filed tax returns. Subject to what occurs here, Mr. Bianco is ready to begin in a business.

Your Honor knows that for the last ten years he's testified more than once before grand juries and admitted that he was a gambler, admitted that he earned money in that respect. I respectfully submit to your Honor that the man should be sentenced for the crime and not for suspicions and surmise, and I ask your Honor to do that this morning.

THE COURT: Do you have anything to say?

THE DEFENDANT: I didn't hear that.

THE COURT: Do you have anything to say?

THE DEFENDANT: No, your Honor, I don't.

THE COURT: Mr. McCaffery.

MR. MC CAFFERY: Your Honor, I think that the evidence at the trial indicated that this was a particularly flagrant disregard of the Internal Revenue laws. The taxpayer was charged with not filing returns for a five-year period, and the jury's verdict indicated that they were thoroughly convinced that he had not filed for those five years. Not only had he not filed for those five years for which he was charged, he had not filed since 1962.

I think this indicates a flagrant disregard of the law, and perhaps it ties in with the earlier offense in which he got into trouble in the Army, for striking a superior officer. I think it tends

to show that he had a flagrant disregard of the law.

I don't think that this defendant can be sentenced, your Honor, without taking into account his background.

any of what you might call the rumors or the hearsay statements. Of course I could not ignore his record.

My sentence is based upon what I regard and what my colleagues regard as a flagrant disregard of the tax laws, and it is a pattern that I think just cannot be condened. I don't care whether it's labeled failure to file or how it is labeled, it went on for such a long period of time. And I think that the Government's proof showed during the course of the trial that the Government only got the tip of the iceberg.

So it's the judgment of the Court on Count 1 that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of one year, and the defendant shall pay a fine to the United States in the sum of \$10,000.

It's adjudged on Count 2 that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for

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imprisonment for a term of one year, and defendant shall pay a fine to the United States in the sum of \$10,000, said sentence of imprisonment to run consecutively with the sentence imposed under Count 1, and such fine to be paid in addition to the fine under Count 1.

It is adjudged on Count 3 that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of one year, and defendant shall pay a fine to the United States in the sum of \$10,000, said sentence of imprisonment to run consecutively with the sentence imposed under Counts 1 and 2, and such fine to be paid in addition to the fine under Counts 1 and 2.

It is adjudged under Count 4 that the defendant is hereby committed to the custody of the Attorney
General or his authorized representative for imprisonment for a term of one year, and defendant shall pay
a fine to the United States in the sum of \$10,000,
said sentence of imprisonment to run consecutively
with the sentences imposed under Counts 1, 2 and 3,
and such fine to be paid in addition to Counts 1,
2 and 3.

It is adjudged under Count 5 that the

defendant is committed to the custody of the Attorney
General or his authorized representative for imprisonment for a term of one year, and defendant shall pay
a fine to the United States in the sum of \$10,000,
the execution of said sentence under Count 5 is
hereby suspended and defendant placed on probation
for a period of five years, upon the following
conditions: that he pay all taxes and penalties
and interest which he currently owes to the Internal
Revenue Service before the expiration of such period
of probation.

The fine under Count 5 shall be in addition to the fines imposed under Counts 1, 2, 3 and 4. The defendant is ordered to stand committed until the foregoing fines are paid or otherwise discharged by due course of law. The order that the defendant stand committed is stayed until July 1, 1975.

Of course, Mr. Bianco, you have your right to appeal from a conviction.

MR. LA ROSSA: Will your Honor stay the commitment, the fine?

THE COURT: No.

MR. LA ROSSA: Pending an appeal in this case?
THE COURT: No, July 1st for the payment of

the fine. Of course, he'll remain on bail, if the Government has no objection, during appeal.

MR. LA ROSSA: But your Honor is ordering him committed as of July 1st if the fine is not paid.

THE COURT: That's right.

MR. LA ROSSA: You will not stay that pending the appeal in this case?

THE COURT: No, the fine must be paid.

MR. LA ROSSA: Will your Honor give us a little longer than July 1st? We are talking about \$5,000, your Honor.

THE COURT: How long do you want?

MR. LA ROSSA: Can we have till the end of
July?

THE COURT: I'll give you till July 15th.

MR. LA ROSSA: Did I understand that the last \$10,000 fine on Count 5 is to be paid, or is that--

of \$50,000 is to be paid, or he's to stand committed.

What is the bail?

MR. MC CAFFERY: Bail, your Honor, is \$50,000 p.r. bond, and a \$5,000 surety bond.

THE COURT: Is there any reason why it shouldn't be continued?

MR. MC CAFFERY: The Government will consent to the same bail.

THE COURT: Let it be continued pending appeal.

Now, on appeal I take it he doesn't need counsel appointed?

MR. LA ROSSA: No, sir, he does not.

THE COURT: Has notice of appeal been filed?

You will, I take it?

MR. LA ROSSA: Yes, sir.

THE COURT: It has not been filed.

MR. LA ROSSA: It couldn't be filed until the sentence.

THE COURT: But it will be filed?

MR. LA ROSSA: Yes, sir, it will.

THE COURT: The probation period commences as of the completion of the jail term on 1, 2, 3, and 4.

Table D 5. United States District Courts

Criminal Defendants Sentenced after Conviction in 90 District Courts, by Nature of Offense, during the Fincel Year Ended June 30, 1973

NATURE OF OFFENSE	TOTAL DEFENDANTS SENTENCED										
		: IPPH I SPINHENT 1									SENTENCE
		TOTAL	SUL IT	1 OAY AND	LVEN 1 7544 640 1 047 10 3 75415	70 5 YCA-5	5 YE415 AND UVEA	PRO- NATION	FIRE	CIHA	HANGESCH- PENT (MINTHS)
<u>for st</u>	34, 183	17.541	.2.231	3,324	2.412 *	4,141	4.223	15,025	1.:160	551	42.4
RAL PEFFENCES	RO	54	,	1		12-	34	20		1	164.0
MINDERLST DEGREE	1	34	1 - 2	-	1 1 2	4	3	1 14	:	-	219.4
DAGERY, TOTAL	1.434	1.307	4.	. 8	30	. 1/3	1.04%	126	-	1	134.9
PI)STAL	1.357 50 27	1.244	33	7	3A - -	111	1+014 29 5	112		111	136.7
SSAUL T	436	223	33	. 58	33	57	42	192	22	9	35.0
UPGLARY BREAKING AND ENTERING, FOTAL	215	124	,	20	13	51	33	90	-	1	51.9
RANKPOSTAL	29 53 13	25 38 7 54	2 3	1	1 6	5 19 3 24	15 8 2	14	:	11-1	103.3
ARCENY AND THEFT. TOTAL		1.534	294	240	270	474	- 256	1.655	63	28	37.1
BANK POSTAL INTERSTATE SHIPME.IS. OTHER U.S. PECPERTY. TRANSPORTATION, ETC. OF	186 1,239 911 533	103 578 365 175	13 101 36 45	14 90 44 41	115 77 23	24 206 93 40	51 66 61 26	77 655 510 379	2 29 23	1 4 7 6	51.5 30.5 25.9 27.3
STOLEN PROPERTY	321	215	. 16	31	40	29	**	134	1 4	1 9	38.1 25.3
SEZZLEMENT, TOTAL	1.460	366	152	54	59	76	25	1.066	22	. 6	20.1
POSTAL	820 404 236	97 61	76 54 22	14 7	30 10 11	46 16 14	15 3 7	301 169	11 5 6	1 -	21.7 13.6 24.7
AUD. TOTAL	2,572	429	292	239	174	134	90	1.404	163	56	20.7
INCOME TAX. LENDING INSTITUTIONS POSTAL VETERANS AND ALLUTHENIS. SECURITIES AND EXCHANGE SOCIAL SECURITY. NATIONALITY LANS	948 219 655 7 24 64 30	391 67 275 3 9	159 20 52 3 2 2	129 15 48 3	54 27 50 -	25 3 ac	24 2 45 - -	512 141 351 4 11 51	50 8 25 - 5 10	1	14.0 16.3 31.4
PALSE CLAIMS AND STATE- MENTS	288	58 112	20	16	9 31	15	15	155	31 14	45	18.2

Table D 5. United States District Courts

Criminal Defendants Sentenced after Conviction in 90 District Courts, by Nature of Offense, during the Fiscal Year Ended June 30, 1973
(Concluded)

	1	-		74		TYPE OF	SENTENCE				
NATURE UP CEFENSE	DEFENDANT	I PPE I SONNE NE							T	AVERAGE	
	SENTENCEO	TOTAL	SPLIT SFMTENCE	T YEAR AND "I DAY AND UNITER	TEAT IND	3 TJ 5	S VEARS	PRG- 6AJIO		CTHE	IMPPISCA-
GENERAL CFFENSESCUNTIMIED	 	-			3 16445						
AUTO THEFT		l								_	
FORCERY AND COUNTERFEITING.	1,933	1,389	122	91	253	. 625	257	577	16	1 .	
TOTAL	3.875							+		1 7	37.3
TRANSPORTATION OF FORCED	34875	1.932	336	253	395	502	366	1.917	13	13	
36(11411114)	253							+	+	+ "	34-1
	83	459	.65	42	. 65	153	114	192	2	1 -	
COUNTERFEIT ING.	2.148	978	157	195	221	. 300		35	-	-	39.8
SEX OFFERSES, TOTAL	754	450	104	51	77	117	145	334	5	9	31.4
	89	63	7	•	13	17	17	1		1	34.4
MHITE SLAVE TOAFFIC	32	26		•				24	2	-	>6.C
OTHER	13	33	٠	3	15	10	11	5	1	-	55.0
MARCHTICS, TOTAL	13	•1	1	-	1	ī	1	11	1 :	-	20.5
	7.814	5,097	572	873	744	1.343	1.565				
BORDER REGISTRATIONS	127	69	14	,			1,505	2.591	18	100	45.5
	147	1	-	:	11	17	50	. 50	1	7	36.4
CONTROL ACT, TOTAL	""	166	•	. 3	13	12	75	41	1 :	-	
TAK I HUANA	3,372	4.921	550	863	719	1,314			1	-	76.2
	3.376	2.494	327	454	342	511	295	1.349	17	131	44.9
CONTRULLED SUBSTANCES	741	494	. 52	87	62	162	1.047	Se 3	1	14	29.4
TOTAL GENERAL CFFENSES.	- 1				•		131	288		3	41.5
	4,649	2.024	312	559	434	373	351		1 . !		
TRAFFIC	131	53	21	,		7.01	321	1,798	180	42	35.7
	715	4	2	ż	ii.	•		64 -	12	2	74.7
RAIL JUMPING.	513	468	14	321	127	67	52	39	57	;	
	155	113	14	34	25	24	23	42	1 - 1	3	19.2
THREATS		3)	1	12	•	3	8	33	:	-	25.3
	467	102	36	30	47	58	"	199	1 1		30.5
PERJUTY	88	84	45	43	. 28	19	10	467	12	1	>3.C
	1.745	797	.13	9	;	14	75		-	-1	167.7
Olnex	05	16	128	133	513	202	121	872	60	16	31.4
PECTAL CFFENSES	1					2.	2	21	20	6	,
IMMIGRATION LASS	2.003	.745	310	634	205		_		,		
LIGUOR. INTERNAL REVENUE	1.300	511				46	50	419	122	217	11.0
FEDERAL STATUTES. THTAL			211	127	116	49		758	30	1	13.3
	4,193	732	195	213	151	128	73	2.169	1.201		
ARTICULTURAL ACT	437	47	19	19	3		-		1,201	61	29.3
	63	13	-	,	1	:	il	5.70	163	3	6.0
PAIR LAND TANDON	37	ii	:	;	2	-	2	46	111	-:	
FIRM FAI IN H. A. T	2.1	21	:	-	•		2	3	14	1	
MIGRATURY ALPITATE	61	21	i	,	;	:	1	53	123	-	
	364	1	-	2	:	3	=	116	14	2	
OTHER NATIONAL DEFEASE	777	260	101	39	••	.:	1	13	237	10	
[465	70	11				41	"	107	1	اد	17.5
MATERIAL			•	16	•	•	-	38	15	-	
	815	13	,		•	2	2	.,	- 1		
OTHER		212	21 .	79	35	7	- 1	002	. 24	10	0.3
cludes sentences of more than 6 mont							57	3.2	276	- 1	~.,

Includes sentences of more than 6 months which are to be followed by a term of probation (mixed sentences). A split sentence is a sentence on a 1-count indictment of 6 months or less in a jail-type institution, followed by a term of probation, 18, U.S.C. 3651. Included in these figures are mixed sentences involving confinement for 6 months or less on 1 count, to be followed by a term of probation on 1 or more other counts.

Average sentence is not shown where the number of defendants sentenced to imprisonment was less than 25.

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK
-----X
UNITED STATES OF AMERICA,

v.

No. 74 CR 284

NICHOLAS BIANCO,

Defendant.

SIR:

PLEASE TAKE NOTICE that NICHOLAS BIANCO hereby appeals to the United States Court of Appeals for the Second Circuit from a Judgment of Conviction entered against him before the Hon. Thomas C. Platt, United States District Judge for the Eastern District of New York, on June 20th, 1975 wherein the defendant was convicted of five counts of violating Title 28, United States Code, Section 7203. As a result of this conviction, the defendant was sentenced to a combined prison term of four (4) years and fined in the aggregate

amount of \$50,000. In addition, defendant was placed on probation for a period of five (5) years to commence upon expiration of imprisonment.

Yours, etc.

LA ROSSA, SHARGEL & FISCHETTI Attorneys for Defendant NICHOLAS BIANCO Office and P.O. Address 522 Fifth Avenue New York, New York 10036 687-4100

> By:/s/ GERALD L. SHARGEL A Member of the Firm

To:

HON. DAVID TRAGER United States Attorney Eastern District of New York 225 Cadman Plaza East Brooklyn, New York 11201

> Defendant's address: 30 Bowden Avenue Barrington, Rhode Island

201 Affidavit of Service by Mail

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-XXXXXXXX Appellee,

- against -

NICHOLAS L. BIANCO,

Defendant-Appellant.

Index No. .

Affidavit of Service by Mail

NEW YORK STATE OF NEW YORK, COUNTY OF

SS ..:

being duly sworn. Eugene L. St. Louis depose and say that deponent is not a party to the action, is over 18 years of age and resides at 1235 Plane Street, Union, N.J. 07083

David G. K Trager upon

attornev(s) for

Appellee

That on the

in this action, at 225 Cadman Plaza, Brooklym, N.Y.

day of September 1975, deponent served the annexed legen dit

the address designated by said attorney(s) for that purpose by depositing a true copy of same, enclosed in a postpaid properly addressed wrapper in a Post Office Official Depository under the exclusive care and custody of the United States Post Office Department, within the State of 12 York.

Sworn to before me, this

16th

day of September

75

EUGENE L. ST. LOUIS

ROBER NOTARY PUBL C. la e No. 31 - 0418950 Qualified in New York Con Commission Expires March 30, 1972

